

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

October 11, 2001

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, October 11, 2001, at 1:00 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Jerry Michaelis, Chair; Bud Hentzen; Ron Marnell; Dorman Blake; Kerry Coulter; Bill Johnson; Ray Warren; Harold Warner; Don Anderson; David Wells; Frank Garofalo; James Barfield; Elizabeth Bishop; and John W. McKay, Jr. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; and Valerie Robinson, Recording Secretary.

1. Approval of the MAPC minutes for September 6, 2001.

Motion: That the minutes for September 6, 2001 be approved.

MCKAY moved, **HENTZEN** seconded the motion, and it carried unanimously (11-0).

WARREN in at 1:05
BISHOP in at 1:10
COULTER in at 1:11
BARFIELD in at 1:25

2. Appointments to Committees.

MICHAELIS indicated that only two changes were made. Blake was to go the Subdivision Committee while Michaelis was to go to Advance Plans. Everyone else is to remain where they are. Warner is to be chairman of the Subdivision Committee and Hentzen is to be chairman of Advance Plans.

3. Case No. ZON2001-00001- Mike Shell (Owner) request zone change from "LI" Limited Industrial to "SF-5" Single-Family Residential and "NO" Neighborhood Office on property described as:

That part of the Northwest Quarter of Section 3, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning at the intersection of the North line of said Northwest Quarter with the Easterly right-of-way line of the Kansas and Southwestern Railroad (formerly the Missouri Pacific Railroad); thence South 89 degrees 58'49" East along the North line of said Northwest Quarter, 773.70 feet, more or less, to a point 375.00 feet West of the Northwest corner of Lot 1, Block 1, Barefoot Bay 2nd Addition to Wichita, Sedgwick County, Kansas, as measured along the North line of said Northwest Quarter; thence South 00 degrees 01'29" West, 185.80 feet; thence South 77 degrees 42'40" West, 76.22 feet; thence North 72 degrees 49'20" West, 83.00 feet; thence South 48 degrees 50'40" West, 133.00 feet; thence South 26 degrees 20'40" West, 187.00 feet; thence South 37 degrees 20'20" East, 615.00 feet; thence S 48 degrees 01'41" East 208.30 feet; thence South 50 degrees 32'11" West, 77.61 feet, more or less, to a point on said Easterly railroad right-of-way line; thence North 39 degrees 10'02" West along said Easterly railroad right-of-way line, 1432.06 feet to the point of beginning. Subject to road rights-of-way of record.

AND

That part of the Northwest Quarter of Section 3, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: Commencing at the intersection of the North line of said Northwest Quarter with the Easterly right-of-way line of the Kansas and Southwestern Railroad (formerly the Missouri Pacific Railroad); thence South 89 degrees 58'49" East along the North line of said Northwest Quarter, 773.70 feet, more or less, to a point 375.00 feet West of the Northwest corner of Lot 1, Block 1, Barefoot Bay 2nd Addition to Wichita, Sedgwick County, Kansas, as measured along the North line of said Northwest Quarter, and for a point of beginning; thence South 00 degrees 01'29" West, 185.80 feet; thence North 77 degrees 42'40" East, 408.00 feet, more or less, to a point on the West line of said Lot 1; thence North 25 degrees 38'36" West along the West line of said Lot 1, 54.18 feet to the Northwest corner of said Lot 1; thence North 00 degrees 01'29" East, 50.00 feet to a point on the North line of said Northwest Quarter; thence North 89 degrees 58'31" West along the North line of said Northwest Quarter, 375.00 feet to the point of beginning. Subject to road rights-of-way of record. as shown by the last deed of record filed in the Office of the Register of Deeds, Sedgwick County, Kansas, on the 13th day of July, 2001 at 7:00 A.M. Generally located South of 29th Street North and east of Ridge Road (6501 W. 29th Street North).

MICHAELIS indicated they were all anxiously awaiting for...I would like to remind the members and the audience that last time we essentially said that was the public hearing so there will no input from the audience taken today other than what we have already heard. We will hear from the representative of, the attorney in this case. First thing I guess we need to hear from the applicant.

JOHNSON indicated he wanted to abstain from this item since he wasn't here when the public hearing was done. To look this on paper it appears to a very easy case to rule in the change. Hearing all the correspondence I got and all the phone calls I got I see there is a difference of opinion so since I haven't seen or heard the hearing I am going to abstain.

MICHAELIS asked if there was anyone else that wasn't at the last meeting that we had the public hearing.

HENTZEN suggested that we all have studied and if you don't allow us to vote on it, you are not going to have a quorum to vote to deal with this item.

MICHAELIS stated that they did. He counted nine members able to vote and stated they still had a quorum.

HENTZEN asked if they still had a quorum if we three abstain.

MICHAELIS stated they still had a quorum if the three abstain.

KROUT noted that Joe Lang, city attorney, was present, and a quorum was maintained as long you are here, even if you are abstaining, you are still counted towards a quorum, even though there may be less than eight people voting.

JOE LANG stated that any commissioner present may vote today if they have had the opportunity to review the record and review the testimony that has been given. They would theoretically have the same evidence in front of them that those that were here had. So I think while the chair may make some rulings, I think it is an individual determination of whether or not the people feel that they can give an adequate review and a fair decision based on the record.

MICHAELIS stated he would leave it up to individual members. If they don't feel comfortable in voting on it because you weren't here then do so. But you can still remain present and we still have enough to proceed on.

JOHNSON stated he was not going to vote.

MCKAY acknowledged that he had received a letter from a lady or from someone on this item.

MICHAELIS stated that it was probably safer to say is there anyone who has not received a letter? So Mr. Anderson, Mr. Hentzen and Mr. Johnson are not going to voting.

HENTZEN exclaimed what?

ANDERSON asked if they were not going to be voting?

MICHAELIS asked Anderson if he was here last time?

ANDERSON stated well no, but why couldn't he vote?

MICHAELIS asked if he had seen the minutes and read everything?

ANDERSON stated he had read all the material.

KROUT noted that staff had not supplied the planning commission with the minutes from the last meeting where the public testimony was taken. He thought the city attorney would say that then you haven't seen or heard the record of that hearing, it would not be appropriate to be involved in the decision.

LANG told the commission they had several options. One would be to continue the discussion, close out the hearing and defer a decision until everyone has had a chance to either hear the tape or read the minutes, is one option. The other option is for those people to determine that they cannot make a fair hearing, a fair decision since they have not heard all the evidence. So I think you are in a hard situation to deny a present commissioner from voting, but that commissioner vote, if it affects a majority decision, can also be challenged in that they are not basing their decision on the evidence that has been presented since they have not heard the evidence. So our recommendation would be to either to have them abstain or give them an opportunity to hear the evidence.

MICHAELIS stated they were going to go through most of the procedure again. So once again if they just kind of left it up to them, if at the end of the presentation, they feel comfortable voting...

LANG told them that if the commission had a full ranging discussion of what has gone on that might be helpful. He also suggested...he understood the hearing had been closed last time except for certain matters. There has been additional written material presented and he thought a determination was needed if they were going allow that additional material in the record or not. The fact that some people have already seen and read it probably mitigates towards having to having to admit it. You do need to provide for the opportunity for that decision to be made and anyone to comment on it.

MCKAY stated they had already closed the public hearing, correct?

MICHAELIS indicated that was correct.

MCKAY noted it was closed except for one person. He wondered if these people on the commission that were not here, the three that were not here, was he understanding correctly that they will be hearing enough material today to make a decision without opening up for a public hearing?

LANG responded he did not want to speculate whether they will or not. It partly depends on how much debate goes on amongst the commissioners and how much recitation and summarization of the prior testimony is given. It is certainly possible for absent commissioners to be brought up to speed on the case. It depends on the individual case whether so much evidence has already been presented that it cannot be adequately summarized. But if someone can adequately summarize the evidence presented to date, it certainly can be done.

MCKAY stated where he was coming from that the agent will re-represent his case to the three people present today...I guess the question I am asking is it necessary or is it not necessary. I don't want to go through this exercise and have it challenged because we have a quorum without the three voters.

LANG noted that an issue would be if the three votes would make a difference in the outcome or not.

MCKAY stated he did not want to go through the whole process again unless they have to and take care of it right now.

MICHAELIS asked if they were within their rights, at the end and when it comes time to vote after all the discussion, if everyone feels confident enough to vote on it, are we within our rights there?

LANG noted they were within their rights. He thought it would be helpful for the absent commissioners to state what they have considered and heard, so what they are basing their evidence on.

HENTZEN stated that he has had more calls, more attention, and more paper on this case than any other case he has been on. So even though he was out of the state during the last meeting, he had the opportunity to learn about it, both from the staff report and other places.

LANG stated that was helpful for him to state that for the record.

MICHAELIS responded by saying he was going to leave it to the individual person. At the end of the presentation, when it comes time to vote, if you feel comfortable to vote, then vote. If you don't want to, don't.

JOHNSON asked if the hearing was closed and we are going to let someone speak, are we going to let the applicant have time for rebuttal?

MICHAELIS indicated yes.

JOHNSON asked if the applicant has received all the information they received.

MICHAELIS stated they would find out when they heard from him. He further noted this was an unusual deal, to say the least. So, Mr. Meyer, do you want to start?

PHIL MEYER, agent for the applicant, with him was Chris Mackelgun, who is legal counsel for the applicant. In an effort to speed the process up, I think I have a two minute rebuttal after Ms. Ellis speaks. I'll just defer and wait until the two-minute rebuttal for my comments.

MICHAELIS asked to hear from the representative of the homeowners association.

SUSAN ELLIS stated she was there on behalf of the Barefoot Bay Owners Association. My job is to convey to the commission the association's concern about the pending application and the detrimental impact that the members of that association feel granting that application would have on their community. I understand that you have heard from several of them independently as individuals. I am here on behalf of the association. As you know we have a pending application to downzone the subject property, the subject of the application. It is my understanding that neighborhoods generally don't object to that kind of an application. But my client, the association, strenuously objects. I think everybody knows that based on Mr. Hentzen's comments on how much paperwork has been provided. The community that this application affects is based around a 120 acre privately owned lake. That lake has speedboats, ski boats, jet skis, fishing, canoes it is a multi-purpose lake. It is her understanding that her client thinks that is different from all the other lakes in the community and surrounding area. The current neighborhood includes both residential and industrial development at this point. And the people in the association who purchased the lots out there and built their homes knew about the limited industrial development or zoning that is in effect now and is also familiar with the other industrial zoning that is in the area and they have learned to live with that and appreciate that. We have provided to the commission photographs of other industrial development in the area. We have also provided a map that shows the residential development as well as the other industrial development in the area. I think the commission members' time would be well spent looking at that. This is not the normal community. And asking to change the zoning as it is, my clients feel very strongly that change would have a detrimental effect on this unique community. The detrimental effect would not only be on the land out there, but more specifically on the lake and lake usage. The current plat of the subject property has been filed and approved and it shows eight plats (lots). I understand though that if this application is approved that plat could be modified to include even more lots. The lake itself is owned by the association, but the subject property, the subject of the application through covenants and restrictions are allowed usage of the lake. They don't have ownership of the lake, they have usage of the lake. There has been recent Sedgwick County District Court litigation regarding those covenants. I think those issues are outside the purview of the commission here today. But I think it is somewhat relevant that the commission understand the homeowners in this development take all of this very seriously. They take their lake very seriously. They take the safety of the lake very seriously. And that is their prime concern. And if the residential application is approved, then we have a plat that is targeted towards more lake access. At least eight owners, maybe more. And when you have property that has lake access obviously we are going to have fishing and boating and skiing and jet skiing on this lake in addition to what is there already. My client feels that the increased usage of the lake has a detrimental effect on the community. I liken it to many communities find or fear zoning changes would increase traffic flow on their roadways. My client that, but they fear more the increased boat traffic flow on this community facility, the lake. And when we have increased traffic on the lake then we have increased safety concerns over what we have today. If we have increased traffic usage or traffic flow on the lake, then my client who has the liability for the lake then incurs additional liability based on that increased usage. If there is increase usage in addition to safety concerns they then have to increase their liability insurance coverage. They have to consider private security of the lake. To date we have had problems with the lake, as recently as Labor Day. We have had concerns or problems based on people who identified themselves as owners of one of the lots on this newly platted property. If we have further usage of the lake, we are concerned that we will have to hire private security. We have checked communities in Kansas City who have similar unique...

MICHAELIS indicated that her time was up, did she need additional time?

ELLIS asked if she could have another minute?

Motion: To give her two more minutes.

MCKAY moved, **WARNER** seconded the motion, and it carried unanimously (14-0)

ELLIS stated that in addition to safety, in addition to increased costs associated with increased usage on the lake, her clients are also concerned about detrimental effects of increased boat usage on pollution, increased noise pollution regarding boats and additional people. They are concerned about further erosion to the shoreline. They are concerned about the local wildlife in the area. Again, this is a unique situation. All her clients want is for the commission to do is to apply the criteria for zoning and make a determination that to grant the application has a detrimental impact on fifty homeowners out there. Fifty homeowners who have lived in that community, developed that community and to deny the application means that the applicant can develop his property and we expect that property to develop. But it is to be developed based on what my clients' membership understood the zoning to be at the time they bought into that community. We think that denying the application protects the neighborhood's public health, public safety and would ask the commission to look at the information that has been provided and to allow these homeowners the continued quiet use of their property. Thank you.

MICHAELIS asked if there were any questions of Ms. Ellis?

COULTER asked if it stays zoned as it is currently, what do they feel would be possibly built in that area?

ELLIS stated they had spoken in terms of medical buildings, restaurants, concrete plants. We have talked the whole gamut of the zoning or the potential for the development based on current zoning. I have not heard from any member of the association that I represent that they object to that kind of development, a business of some sort will have much more limited usage of the lake than if we have eight houses out there. Built beside a lake to use the lake.

COULTER asked could a boating place or jet ski place come in? Could they move in to that area and build in there without a conditional use?

KROUT stated that they may want to put the zoning map up. A majority of the lake is zoned residential, and I think that you couldn't use most of the lake for outdoor commercial recreational uses without rezoning the lake, and the lake is owned by the homeowners association.

COULTER asked that if a cement plant went in, they don't feel that is detrimental to their current property?

ELLIS stated no, in fact if you look at the map that is provided to you, there are just those kinds of businesses in the area on all four sides of the residential development at this point.

HENTZEN inquired if the association owns the entire lake?

ELLIS responded that there is an insignificant portion of the lake immediately adjacent to subject property that is not owned by the homeowners' association. The vast majority of the lake is owned by, and is the responsibility of, the association.

GAROFALO stated that he had read the journal entry that was denied on the court case that addressed the safety issue and the lake seems to be one of the dominant factors that the association was arguing. As I read the journal entry, it indicated that the association makes up the rules on the operation of the lake. Couldn't the association change its rules?

ELLIS stated that she was involved in that lawsuit and they tried to change the rules to limit access to the lake by the subject property. The journal entry denied that availability to the association.

GAROFALO stated it said they have a right to.

ELLIS noted that we can change the rules to affect all the other fifty homeowners and then the subject property has to be treated as those homeowners are. But what that would do is to ask us to curtail the usage by the existing homeowners to accommodate any potential increased usage by development of the subject property.

GAROFALO wondered if the association owns most of the lake, practically the whole thing, I imagine someone who would be using it would want to use most of the lake and be able to run around their boat on the lake.

ELLIS said yes.

GAROFALO asked if the association made certain rules prohibiting some access to, would that not apply to these new property owners?

ELLIS stated they tried to limit the access to the new property owners and their access would have to be limited because of the way the covenants are written, that access has to be limited in the same manner that the existing homeowners' access is limited. So if we want to leave lake usage as it is we would have to curtail the current homeowners' usage to offset the increased usage caused by the development of the subject property.

GAROFALO noted that instead of three boats, everyone would be limited to two boats if you wanted to.

ELLIS said yes, I think the association has that power.

GAROFALO asked if most people out there.....

ELLIS stated the concern is that if the plat, as it is now, allows entry onto the lake by at least eight additional new individuals to access the lake.

WARNER asked how does the area we are talking about have the right to use the lake and have no responsibility for liability or whatever dues are paid to maintain the lake.

ELLIS responded that when the original developer implemented the current covenants and conditions, and filed those of record, that's what the agreement was back then. They continue to be bound by those regulations, and the court has very recently reminded us that we are bound by those with the effect being that we, the association, does in fact bear the liability.

WARNER noted that as he understood the discussion they had at the last meeting, if this were going to be one lot that they wouldn't be opposed to the zoning. There would be fifty-one lots instead of fifty and if this is the case wouldn't that one lot also have some liability and belong to the association, but if there is eight lots that can't happen? I don't understand that.

ELLIS responded that if the subject property is left as one lot there is no way to force them into the association. Although there has been discussion between counsel about including it in the association, that hasn't happened. But the original intent of the development, the developer prior to your current applicant, it is my clients understanding that that lot was to remain one. If it remained one, and if it remains one with the same type of usage on the lake as the rest of the homeowners, that doesn't present a problem to the association. Because that is one owner therefore up to three boats. But when you divide it, and then allow residential so that there is more than one owner, then the number of owners increases the number of boats. We continue to carry the brunt of that liability.

WARNER asked if she would be opposed that if there were eight lots and they made their covenants that required them to have only one boat. Then you would only have an increase of four boats.

ELLIS responded that her clients would rather that it not be residentially developed, but if it were limited to four lots, therefore four boats, they would certainly be more pleased with that than the potential that is before the commission now.

WARNER stated that that is not what he said.

ELLIS said she was sorry.

WARNER said that was fine.

MCKAY asked if the lots had access to the lake based on the restrictive covenants filed when Barefoot Bay was developed, is that what you are saying?

ELLIS responded yes.

MCKAY asked couldn't those covenants be changed by a percentage of ownership in the neighborhood? Like 75 percent or 80 percent of the neighborhood can change the restrictive covenants?

ELLIS stated the covenants could be changed but the covenants are very specific that changes can't detrimentally affect the subject properties lake usage without the subject property agreeing to those modifications.

MCKAY said O.K.

GAROFALO one other point that was made was a concern about devaluation of the present properties if the subject property is developed as planned or proposed. Do you have any evidence or anything you can show us?

ELLIS responded that she had two letters, letters from two appraisers and two realtors in the area that she was provided today. She had copies for everyone, but both the appraisers and the realtors, as well as Sharon Buck who is a realtor and a member of the association, all have advised that if current lake usage needs to be curtailed, there is the potential that the current property value could be reduced. She also had information from Ms. Buck that says that if the plat as approved and houses are built on those eight lots the size of those houses will be significantly less than the current size of homes in the development. Ms. Buck and the other two realtors and the other two appraisers have expressed concern that the combination of reduced lake usage and the smaller size residences on the subject property will in fact have an adverse effect, a detrimental impact on the value on the current residences in the neighborhood. Those are from Judy Anderson who is a realtor, from Sherry Evans of Realty Executives, from Robert Bussy, Bussy Appraisal Services and Mark Freytag who is also an appraiser.

MCKAY asked for the zoning map to be put back up. A comment was made a few moments ago that the majority of this lake was residential. Doesn't look like it to me. That's all I'm saying. It looks like a majority of it is "LI".

ELLIS responded that there is another part of the lake.

MCKAY stated he understood that, but where these properties are located is in the northwest...that part of it. Everything straight south of that down to the cul-de-sac and to the east where they broke through and tied the two lakes together is all zoned industrial. Where they tied the two lakes together and broke through from there on is all residential. Everything west of that is industrial.

MICHAELIS noted that a boat company could go in there.

MCKAY stated a boat company could go in there and utilize that portion of the lake based on present zoning. There is two lakes and they just tied them together and everything on the east side they couldn't use.

KROUT responds subject to whatever private restrictions there may be on that lake can be legally imposed on the users of that lake. I don't know what all they are.

ELLIS noted with all due respect the two lakes with the break through in the middle, that portion of the lake on the east side is residentially developed now.

MCKAY stated he understood that. He just wanted to see the map because a comment was made that a majority of the lake was residential. And it couldn't be used for a boat company to go in there and do that. I just wanted to see the zoning cause I didn't know what the zoning was for sure and I'm saying to you that the west lake is predominantly is "light industrial" based on that zoning map.

ELLIS replied with all due respect she disagreed with that evaluation. These lots down here are all residential.

MCKAY responded that he was not talking about the lots, he was talking about the lake. The lake was all he was talking about. Not the land, but the lake.

MICHAELIS asked if there were any further questions of Ms. Ellis? Thank you ma'am. Mr. Meyer.

TOM DOCKING, Attorney for individual lot owners, asked if he could raise a question? He was wondering if he could offer a one-minute statement.

MICHAELIS asked the commission if anyone was opposed? O.K.

DOCKING stated that this arises from the comments that were made at the tail end of the MAPC hearing previous to today's, on the 20th. There is a claim that has been made by the applicant in this case that we, the opponents of the application, are trying to use the MAPC as something as a court of law to enforce covenants which we claim restrict the applicant's intended use under the application. This is not the case. And this is the point of my statement. We only ask the MAPC to deny the application based upon the zoning code's own required standards to be applied in such cases. And those are the review criteria in Article V, Sections V.C.8 of the zoning code.

BOB BULMAN testified before you at the last zoning commission. He was a member of the District Advisory Board who recused himself because he is homeowner in the area. But he spoke to this commission at the last hearing. I thought forcefully saying, that reviewing each of the eight criteria in his view the application should be denied. The existence of the covenants and the lawsuits are mere reflections of the residents long standing concern that residential development at Barefoot Bay be limited and specifically the type of development sought by this applicant should not be allowed. The zoning code's review criteria are an appropriate source for guidance to the MAPC in cases just such as ours. I close by reminding the MAPC that the District Advisory Board upon re-hearing voted unanimously to recommend that the application be denied. That is the end of my statement. Thank you very much.

MICHAELIS asked Mr. Meyer for rebuttal.

MEYER stated that he would do his best to complete his comments in two minutes, but he might need a little extra time, but not a whole lot. In essence, there are three issues here that have been tossed out at all the meetings, both DAB meetings and the two planning commission meetings as opposition to this to this zone change. One is access to the lake. Second one is size of the lots we are proposing. The third one is the "NO" zoning. Access to the lake, we doing that at our own risk. We have gone to the court system. We have determined that we have access to the lake. Each lot that we develop has access to that lake. We want to join and will join and we are telling everyone now that we will join the CCR. CCR is the covenants, conditions and restrictions that rule the lake usage. So whatever we join, we'll be paying members. Whatever restrictions are put on the lake by the CCR we will abide to. By joining that CCR we are pretty much saying we will not add any additional lots. We cannot lot split this thing. We have a maximum number of lots. The plat we have today is eight lots. We will not exceed that. By joining the CCR we cannot lot split or add any lots above and beyond that. The last one is the NO zoning. We are willing to put a Protective Overlay on that NO zoning. That Protective Overlay will say in essence that we will have NO zoning with only a home occupation business on that lot. That limits it to a business that is inside the house, exactly what we have described to you that we want to do. We won't be able to do any additional uses beyond that. If you want to put a number of employee limit on that we can do that at four. Which is what Rural Residential home occupations limits employees to – four. Safety on the lake is an issue. We have heard a lot of testimony. The CCR has control of that lake. They can...one more minute please. They can control usage on the lake. They can change that to where every lot has two motorized vehicles. They can change that to where there are certain days, certain lots are on. However they adjust those CCR, we will follow because we will be a member. We will join the homeowners' association and pay the dues as they do. I think I stated in my opening comment that Chris Mackelgun is here. He supplied you with a letter that we would like to make sure it ends up in the minutes. He will be glad to answer any questions and I will answer any questions you may have.

MICHAELIS asked if there were any questions for Mr. Meyer.

BARFIELD stated that the question that came up the last time we talked about this or a couple of times, and I want to revisit that. The issue of the Neighborhood Office, is that something you are willing to concede?

MEYER responded that that is something they would like to keep, the Neighborhood Office. If the planning commission wants to approve it without the Neighborhood Office you have the right to do that. We today are offering a Protective Overlay to put on top of the Neighborhood Office that says we will use that only for home occupation. Meaning that is has to be an office inside someone's house. So that in essence eliminates the opportunity to do an office outside of somebody's home on that lot or develop it as anything other than a residential use.

MICHAELIS asked if there were any further questions of Mr. Meyer?

BISHOP stated she had a question that she was not sure whom to ask you or staff, but I guess I will find out. She was curious as to the transformation of this area from one lot to eight. And at the time that the community covenant area was first developed what was the designation for that area. Was it one lot and you have cut it into eight?

MEYER responded that it is an un-platted parcel. So it has never been platted into a lot or eight lots or, it is still an un-platted parcel today. We have a plat that has been approved by the Subdivision Committee that is on hold until we resolve the zoning issue. But it never was a platted lot, it is an unplatted parcel that the original developer had one structure that was on that unplatted parcel. I don't know if that clearly answers your question.

BISHOP stated that it did more or less.

MEYER said he would let Marvin take a shot at it if that didn't.

MICHAELIS asked if there were further questions. Thank you Mr. Meyer. Mr. Lang could you...I have a question for you, I think. I am not sure. In reference to a couple of things that have come up today and, I think the most enlightening one is the fact that a good chunk of the lake is zoned industrial, would there...the main thing I am concerned about in this whole thing is, two years from now, we are going to be sitting here and somebody is going to come in and say I want to do another concrete plant and we are going to get opposition. Is there anything we can do as a part of this, as a condition of approval, and I don't even know if this acceptable to the homeowners' association, but if they were acceptable to putting, signing something as part of this approval saying that they would not be opposed to anything that by right can go into an industrial area. Is that something that we could do?

LANG stated that would hard to do. You're leaving them vulnerable to future development off their own property and their ability to comment on it. They can certainly offer anything they want to, but I would strongly recommend against requiring that kind of restrictions. You have a pretty broad authority with a down-zoning like this of placing use restrictions on these properties. You can go a long way on use restrictions, but that kind of comment, restrictions, I would recommend no.

MICHAELIS said O.K. thank you.

KROUT stated this may be a question for someone else, but you (Lang) did read the covenants and restrictions, and even thought we don't usually pay attention to them, I think it is important to know in this case whether or not this question about the use of the property for commercial purposes including the lake for commercial purposes...the lake is owned by the homeowners' association and it has zoning which would permit commercial use of the lake. Did the restrictions prohibit the use of the lake for commercial purposes?

LANG responded that his answer was, and a suggestion for this whole area of private use and what the covenants say and what the litigation has or has not said is largely irrelevant, I would suggest. As one speaker said, these are private agreements that can be changed. Whatever restrictions that are on the lake now may well change by agreement between the parties or by further litigation. So I don't know and they might be able to tell you what part of the lake can be used for what purposes, but that can change outside of a zoning determination. I think you need to look at what the impacts of the rezoning will be or the denial of the rezoning will be, and not what the impacts on the restrictive covenants or the impacts of the restrictive covenants, the impact of the rules on the lake and so forth, because that is purely private use on private property that can change by agreement at any time.

MARNELL asked Joe, you said we could put quite a bit of restrictions, I mean on a down-zoning that you could put restrictions, can we put any restrictions with respect to the lake or the use of the lake?

LANG stated only that that is within the zoning application.

MARNELL asked as an example for safety reasons, the number of boats allowed, would that be an applicable restriction?

LANG stated he was going to give a partial answer and see if Mr. Krout wants to answer further. I would say that restrictions that address the impact of this rezoning on the community to the extent that you can place that, you can place restrictions on parking, on the number of points of access to streets. I think you can do the same types of things here, if it is a zoning restriction that you are talking about. Mr. Krout, do you have any further comment on that. That would be my observation.

KROUT stated that his opinion would be to more directly answer your question, to use the previous analogy about this being a traffic issue, that we have previously talked about how the lake, even though it is privately owned, is owned by multiple property owners, so there is a community impact on the community use of the lake. I think that because of the testimony that we have had regarding safety, that is a reasonable restriction. That it would be reasonable for the planning commission or the City Council to impose.

LANG stated that a concern they would have to have in drafting such restrictions if you would want to, though, is that they are based on the evidence that is before you and tied in to your zoning area, and that you are not getting into the covenant dispute between the various property owners. One difference between this and streets, of course, is that the streets are publicly owned and you as bodies that recommend to the governing body who have some control over what kind of upgrade to streets are made and that sort of thing. You can't really tell the other land owners how many boats to allow on that lake or whether they should close portions of the lake or that sort of thing.

BISHOP stated she was pursuing the same line of thinking. In other words, the point of view that says that the lake in essence is a community facility, that there is at least some validity for that, in terms of thinking about safety and access and so forth.

LANG stated he thought it was within the general pervueiw of the types of things under the "Golden factors" that are an impact on community facilities. Because community facilities or a general nature obviously include things that are sometimes privately owned. They are not an individual property owner, but they are owned, you have private golf courses, for example, that are held in common

or held by an association. I think that is a good comparison, a private golf course, a country club situation. Whether or not the public in general has access to the lake I don't think that is a requirement for it to be considered a community facility, because it is a facility that impacts more than one property. It impacts a large neighborhood and how that lake is used.

MICHAELIS asked if there were further questions of Mr. Lang.

HENTZEN stated that he has studied this thing carefully. I think I have. The idea that the District Advisory Board voted unanimously to deny, I assume the District Advisory Board is an advisory board to the City Council. Also we, although we are not totally advisory, we make recommendations to the City Council. I am going to try a motion trying to listen to everybody or at least consider everything. I would like to make a motion that this thing that is now LI be zoned residential with four lots, as opposed to eight, and that I accept in that recommendation that the applicant agree to join and be responsible to the homeowners' association like every other person in that community or every other lot, so that they accept the same liability for each lot that everybody else has. So my motion is to approve for residential with the limitation of four lots.

Motion: To, approve the residential zoning but for only four lots and that the applicant agree to join the homeowners association.

HENTZEN moved, no second.

BARFIELD asked Hentzen to address the "NO" request.

HENTZEN stated he did not include the "NO" portion, he said residential. As you know residential can include a home occupation.

MICHAELIS asked for a second for the motion. Seeing none, then for lack of second, the motion dies. Further discussion.

WARREN stated he did not think anyone really wants to discuss this, but he has been to all the hearings and listened to everything. I am sensitive to all the concerns that all of these folks have. Yet I come back to where we are in this. We are asked to make a judgment on the strictly land use issue. The lake has been the issue all along and they have heard about it everywhere. I know that is a heavy concern to those people that live out there because they bought their properties predicated on what they can do with that lake. As far as I am concerned, this property has no right to that lake. Now the courts have spoken differently. In Judge Mark Brighting's comment he says in number 3 "Owners of the adjacent lots have the same rights to the lake as those owners of the lots in the Barefoot Bay development." That is a court ruling. That is not our ruling. And we are going to have to leave that up to the courts. I look at the lake as if it were a private park. Would we restrict these people, and say we will give you the zoning but you got to keep your kids out of that park? That's what I look at this lake being. I think the man has a piece of land. I think he is asking to use the land in a reasonable manner. Without regard to that lake being there one way or the other, I don't think this plat would have gotten five minutes of our attention except for the lake. And yet I think the lake is an issue to be cited by the courts and not by this board. So as much as it makes you very unpopular, I am going to make a motion that this plat be approved as was applied for, subject to the conditions set forth by staff.

KROUT noted the only condition noted by staff was to plat.

WARREN stated whatever conditions staff set out. He couldn't remember, but he could go back and look, but subject to staff conditions.

KROUT inquired if that included the conditions offered by the applicant's agent.

WARREN stated the applicant was pretty much on record. If we want to tie him further, he would put in the motion that we accept all voluntary considerations as made before this group by the applicant dealing with their willingness to enter into the restrictive covenants and pay the necessary fees. I would make that a part of the motion.

KROUT stated he was talking about the zoning restrictions to build a maximum of eight lots, and to the Neighborhood Office being limited to a home business, and the lot sizes.

WARREN stated he would make it subject also to the plat plan as we have reviewed it which would be the eight lots.

KROUT asked about the Neighborhood Office restrictions.

WARREN stated he did not have any problem with that when I consider that it is Industrial now. Having minor home occupation seems like a minor addition. He did not have a problem with the "NO" on the one lot.

KROUT asked about restrictions on the "NO".

WARREN stated that he included the restrictions he has offered. The Protective Overlay he has offered.

MICHAELIS asked for a second.

WARNER seconded.

Motion: that this zoning request be APPROVED, subject to platting within one year and subject to the following provisions of a Protective Overlay District:

1. The density of the subject property shall be limited to 8 dwelling units on no more than 8 lots.

2. Office use on the portion of the subject property zoned "NO" Neighborhood Office shall be limited to a home occupation as permitted by Sec. IV -E of the Unified Zoning Code, except that up to four persons not occupying the dwelling unit may be employed in the home occupation.
3. If consented to by the Barefoot Bay Owners' Association, the subject property shall be subject to "Covenants, Conditions, and Restrictions of Barefoot Bay" as recorded on Film 1479, Pages 0204-0230 or as otherwise agreed to from time to time between the owner of the subject property and the Barefoot Bay Owners' Association.

WARREN moved, **WARNER** seconded the motion.

BISHOP stated that rather than that motion, she would like to see a motion that reduced the number of lots. The Neighborhood Office is a vulnerable area being zoned, remaining zoned Light Industrial for something the neighborhood really would object to. If it were fewer lots that would address some of the concerns in terms of traffic on the lake, which we have heard enough discussion that that is a community facility, and possibly a Protective Overlay that would address the traffic on the lake in terms of the lots that are there.

WARNER asked if this was just approval of the zoning. They were not approving a plat here, are we? The plat has been approved by Subdivision but it still has to come before this board.

KROUT stated that was right.

WARNER stated it looked to him that the time to restrict lots is when the plat comes here. Not when we are trying to decide how it is to be zoned. So if we want four lots we can't do it now anyway. We have to do it later.

KROUT said no. Because if they come to you with four lots, they could lot split or subdivide as long as they met the zoning requirements for eight lots or sixteen lots. And so if you want to restrict the density, that is a zoning issue, and this is the time to do it.

WARNER replied that he understood.

WARREN noted that this matter was already in court having to do mostly with the resistance of the neighborhood to it and of course like I would do, I would bring up every issue there is. I don't know Commissioner Bishop how we justify, say if we had to go to court, how would we justify saying you cannot use this land except for four lots instead of eight? There isn't anything in our ordinance or subdivision regulations or anything that I can see would justify that.

BISHOP replied that we justify actions that are a lot more questionable all the time.

WARREN responded well we don't go to court all the time. This is already in court. And I say we don't have any legal right to do what you say. We don't have anything to stand on.

MICHAELIS felt that Mr. Warner made a very good point. This is a zoning case. We are not reviewing the plat.

BARFIELD asked if we approve any residential zoning, does that automatically mean that this is residential?

KROUT stated that he was sorry, but was not sure he understood the question.

BARFIELD asked if we were talking about four lots, sixteen lots, eight lots residential. Does that automatically make it clear?

WARREN said his motion...

KROUT stated their request is for single family zoning on most of that parcel that is outlined, except for the lot that is on the easternmost portion, only that lot would be zoned "NO" and would be subject to the restrictions that were offered. The rest of it would be limited to single-family.

BARFIELD asks if the commercial use restrictions could be changed.

KROUT says they would have to come back and go through this hearing process again.

MCKAY asked Mr. Warren if his motion included the voluntary restriction that they would not put more than eight lots out there? They volunteered that.

WARREN state Yes, that was part of the motion that he made, and he wanted to make clear that the plat would reflect that plan which the subdivision committee approved.

MCKAY stated that going back to what Marvin said, we can say at this point in time, after Mr. WARNER asked the question, they will not exceed eight lots on this piece of property.

WARREN states that his motion does that.

MCKAY clarified that that was included in his motion.

WARREN said it does that because it is that plat which has eight lots in it.

BISHOP offered a substitute motion. That we agree with the request with the exception of limiting to four lots, the Neighborhood Office with no more than four employees and the Protective Overlay that has been offered on that. And that we ask staff to work on a potential Protective Overlay relative to traffic on the lake or even those four lots.

BLAKE seconded the motion.

MICHAELIS asked for discussion on the substitute motion.

WARNER asked for an explanation on traffic on the lake. How do you do that?

KROUT asked what staff was supposed to do?

BISHOP stated that she wanted some more discussion on that part of that. That is why she left is general in the motion. I think it needs to address the number of watercraft, but there are a variety of watercraft, and she was not sure how to get at that. But she thinks it ought to be limited to two, and perhaps staff can suggest to us how that can be worded to limit watercraft.

WARNER stated that he thought legal counsel said to leave that alone because it was private and it was done with their covenants and they can change them any time they want.

BISHOP responded that she heard him say exactly the opposite this morning.

GAROFALO said he was going to say the same thing. Seemed to him that that was something the homeowners' association could deal with...

BISHOP stated that perhaps we could ask counsel if that part of the motion is stretching it.

LANGE stated that he said both things. You can place some restrictions on the property of that nature, but his concern would be, as was raised, would be drafting them. Because as you have heard here, the homeowners can through their lake rules can change how many boats each lot has out there. So if you set up something for these four or eight lots it might be completely different than what is allowed for the rest of the property. So you can do it but I am suggesting that it would be a treacherous area to enter.

KROUT asked Lang if he agreed that the motion was too open ended, and he was not sure what the staff was supposed to draft or who we were supposed to present it to, present it to the planning commission?

LANG stated he would understand the motion that it would have to come back to the commission for approval before going to Council.

BISHOP stated that was pretty much what she intended was to leave that portion of it. She would be happy to amend the motion and withdraw that part of the motion and just go with the four lots and the Neighborhood Office and the Protective Overlay that has been offered by the applicant relative to the Neighborhood Office.

MICHAELIS asked if that was acceptable to the second?

BLAKE indicated that it was.

MICHAELIS asked Bishop to repeat the motion.

BISHOP that we approve the application for down-zoning to residential for four lots in the subject area, that we approve the Neighborhood Office on the building lot that has been mentioned. She is not sure without an actual plat exactly what area that would be and with the Protective Overlay that has been offered by the applicant.

MICHAELIS said O.K. Any other, Mr. Warren.

WARREN indicated that he thought the motion had some absurdities in it that we ought to look at. Number one this land is right now zoned industrial. This motion says that he can only have four lots. It doesn't say that those four lots have to include the whole piece of land. So he could put four lots in there, based upon this motion, and keep the rest of the land as industrial.

MCKAY stated he was rezoning the whole piece of ground. He would have to make a reapplication.

MICHAELIS stated he was rezoning the whole area.

WARREN said he understood.

KROUT asked the motion maker if four lots meant three residential lots plus the one neighborhood office lot?

BISHOP said correct.

WELLS asked is they were opening up a can of worms if they asked the applicant if they would accept the....

MICHAELIS stated no we could do that. Could you speak into the microphone.

WELLS wondered if the applicant would consider a reduction in the number of lots.

MICHAELIS stated he thought that would be a fair question. Ms. Ellis could you speak to that?

WELLS also wondered if the people would be acceptable to that?

MEYER stated they were planning eight lots on that plat. The eight lots is what they would like to have. And we are not going to volunteer to go less than that. If the planning commission would like to make a recommendation to City Council to go less than eight lots, you certainly have that right. We are not going to agree to that condition.

MICHAELIS said O.K. He didn't expect them to agree to it. Ms. Ellis, would you care to comment?

ELLIS asked for a minute to speak with her clients.
The commission took a five minute recess.

ELLIS stated that her client told her they did not support eight, they did not support four, although four is less onerous than eight. We don't have enough people here to say we would agree with that. We prefer it left as it is.

MICHAELIS said O.K.

MCKAY called for the vote on the substitute motion.

??? seconded the motion.

Motion: Call for the vote on the substitute motion. It carried unanimously (14-0).

MICHAELIS indicated they were voting on the second substitute motion. Just for clarification could they have it read back?

Motion: to agree with the request for residential and Neighborhood Office zoning, but it would only apply to four lots, with one of the four lots being the NO, and including the applicant-offered Protective Overlay restrictions, and with the NO lot being restricted to a home occupation with no more than four employees.

BISHOP moved, **BLAKE** seconded the motion, and it failed 5 to 9. (**MARNELL, COULTER, JOHNSON, WARREN, WARNER, ANDERSON, WELLS, MCKAY, MICHAELIS** voting no).

HENTZEN stated that they called on him too fast and he intended to vote yes.

MICHAELIS stated it was 5 to 9. So the motion failed.

MCKAY called for the original motion.

ANDERSON stated he would like to make a substitute motion.

MICHAELIS said there was an original motion they needed to vote on. And who remembers that?

KROUT restated the motion as being eight total lots, with the restrictions on Neighborhood Office that we previously discussed.

MCKAY asked about the other restrictions offered.

KROUT replied those were the restrictions on the office.

MCKAY said no, they offered number of lots, join the association, join all the other stuff.

KROUT asked Lang if we were all right with "join the association?"

WARREN stated they had it on record what he offered and all he was doing was accepting his recorded offer.

MICHAELIS asked all in favor of that motion? No votes please raise your hands.

Motion: that this request be APPROVED, subject to platting within one year and subject to the following provisions of a Protective Overlay District:

1. The density of the subject property shall be limited to 8 dwelling units on no more than 8 lots.
2. Office use on the portion of the subject property zoned "NO" Neighborhood Office shall be limited to a home occupation as permitted by Sec. IV -E of the Unified Zoning Code, except that up to four persons not occupying the dwelling unit may be employed in the home occupation.
3. If consented to by the Barefoot Bay Owners' Association, the subject property shall be subject to "Covenants, Conditions, and Restrictions of Barefoot Bay" as recorded on Film 1479, Pages 0204-0230 or as otherwise agreed to from time to time between the owner of the subject property and the Barefoot Bay Owners' Association.

WARREN moved, **WARNER** seconded the motion, and it carried 95. (**HENTZEN, BLAKE, BISHOP, ANDERSON, and BARFIELD** voting no)..

items 4-1 through 4-10 were taken in one motion

4/1. **SUB2001-87** – Final Plat of BEELINE ADDITION, located on the northeast corner of Madison and 47th Street South.

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for guarantees or easements. No additional guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. Minimum pad elevations need to be platted.
- D. The structure situated within the 35-ft building setback shall not be enlarged to increase its nonconformity and if removed cannot be replaced within the building setback.
- E. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- F. The Applicant is advised that if platted, the building setback may be reduced to 20 feet to conform with the Zoning setback standard for the LI District.
- G. The Sanitary Sewer Easement needs to be located.
- H. On the final plat tracing, the MAPC signature block needs to reference "J.D. MICHAELIS, Chair".
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of storm water.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147 for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

Motion: That item 4/1 be approved.

MCKAY moved, **BLAKE** seconded the motion, and it carried unanimously (14-0).

4/2. SUB2001-81 – Final Plat of ECK TENTH ADDITION, located on the northwest corner of 183rd Street West and Central.

NOTE: This site is located in the County within three miles of Wichita's city limits. It is in an area designated as "rural" by the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan and located in the Goddard Area of Influence. The site is located within the 100-year floodplain.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Environmental Health Division of the

Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. A plot plan is needed for Lots 3, Block 2, and Lot 6, Block 1 to verify buildable area.

- B. The site is currently located within Rural Water District No. 4. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter to MAPD and Health Department from the water district to that effect.
- C. City Water and Sewer Department requests a petition for future extension of City water and sewer services.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. County Engineering needs to comment on the status of the applicant's drainage plan. Floodway reserve boundaries need to be reviewed. Adjustments to floodway reserves may be required after review of the drainage plan. Minimum pads may be required. Development on Lot 6, Block 1, and Lots 2,3,4,13,14, Block 2, needs to be restricted prior to a letter of Map Revision from FEMA. Drainage easements may need to be increased. A Master Lot Grading Plan is needed.
- F. County Engineering has required complete access control to 183rd West for Lot 7, Block 3; access may be obtained from Willow Creek Drive.

The requested access controls have been platted.

- G. The applicant shall guarantee the installation of Springwood Ct and Pine Ct to the 36-ft rock standard.
- H. Access drives to structures in excess of 150 feet from the edge of the road are to be installed by the owner/builder and accepted by the fire department prior to the issuance of the building permit. Said drives are to be installed according to fire department specifications (20 feet wide with applicable turnaround with an all-weather surface able to withstand the weight of heavy apparatus in inclement weather).
- I. The County Fire Department/GIS needs to comment on the plat's street names. GIS has required Autumn Drive be revised to Springwood; extending from the south line of the plat to include the frontage of Lot 5, Block 1. Autumn Drive Ct shall be revised to Springwood Ct. Pecanwood Road shall be revised to Pecanwood extending from the north line of the plat to include the frontage of Lot 10, Block 2. Pine Road shall be revised to Pine.

GIS has requested the removal of the street names denoted on the abutting property to the north.

- J. Lot 13, Block 2 does not meet the 200-ft lot width requirement which is measured at the building setback line. The lot also does not meet the 100-ft lot frontage requirement. A modification will need to be approved. The Subdivision Committee has approved a modification.
- K. The signature line for the County Commissioners Chair needs to reference "Carolyn McGinn".
- L. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- M. The floodway reserve near the southeast corner of plat needs located with respect to property lines.
- N. On the final plat tracing, the MAPC signature block needs to reference "J.D. MICHAELIS, Chair".
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

Motion: That item 4/2 be approved.

MCKAY moved, **BLAKE** seconded the motion, and it carried unanimously (14-0).

4/3. SUB2001-00055 – Final Plat of BIG CEDAR ESTATES ADDITION located on the northeast corner of 39th Street South and Greenwich Road.

NOTE: This is unplatted property located in the County within three miles of the City of Wichita. It is in an area designated as "Rural" by the Wichita-Sedgwick County Comprehensive Plan.

This plat consists of 2.25 acre lots tied together as pairs by restrictive covenant in order to allow for alternative on-site sewer systems. The covenant would be effective until approval of the alternative systems, upon which time the lots may be sold individually.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. The proposed restrictive covenant tying the lots together shall be provided, which includes language regarding maintenance responsibilities. .
- B. The site is currently served by Rural Water District No. 3. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter to MAPD and Health Department from the water district to that effect.
- C. City Water and Sewer Department has required a petition for future extension of City water and sewer services.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. County Engineering needs to comment on the status of the applicant's drainage plan. A Final Drainage Plan and Master Lot Grading Plan is needed. Minimum pad elevation will be required.
- F. The Applicant shall guarantee the installation of the proposed interior streets to the suburban street standard. The road guarantee shall include the connection of Timberland Road with the existing Calais Road to the north of the plat. This guarantee shall include the installation of a temporary turnaround at the terminus of Cedarwood at the plat's east line.
- G. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- H. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- I. A temporary emergency access easement has been required between Lots 7 and 8, Block 3, which may be vacated upon the extension of Cedarwood to the east. The easement shall be referenced in the plat's text.
- J. The Subdivision Regulations require street jogs of local streets to be at least 150 feet between centerlines. On Greenwich Road, the street jog between Big Cedar Road and Greenwich Court measures 120 feet. County Engineering needs to comment on the possible alignment of Big Cedar Road and Greenwich Court. The Subdivision Committee has recommended a modification of this provision.
- K. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for numerous lots. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width. The Subdivision Committee has recommended a modification of this provision.
- L. GIS/ County Fire Department needs to comment on the plat's street names. GIS has requested that all segments of the street be named.

- M. It appears that certain lots may not meet the 100-ft lot width requirement which is measured at the building setback line. An increase in the distance of the building setback from the road would meet the standard. The Subdivision Committee has recommended a modification of this provision.
- N. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- O. The signature line for the County Commissioners Chair needs to reference "Carolyn McGinn".
- P. An added bearing is needed on the west line of Lot 5, Block 4.
- Q. A legend is needed.
- R. An on-site benchmark is needed.
- S. On the final plat tracing, the MAPC signature block needs to reference "J.D. MICHAELIS, Chair".
- T. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights -of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- V. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- W. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Y. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. Recording of the plat within thirty (30) days after approval by the City council and/or County Commission.
- BB. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- CC. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

Motion: That item 4/3 be approved.

MCKAY moved, **BLAKE** seconded the motion, and it carried unanimously (14-0).

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- 4/4. S/D99-86** – Final Plat of REED COMMERCIAL ADDITION, located on the southeast corner of 21st Street North and 127th Street East.

NOTE: This site has been approved for a zone change (SCZ-0712) from SF-20, Single-Family Residential to LC, Limited Commercial and is also subject to the Reed Property Commercial Community Unit Plan (DP-222). The site is located in the County adjoining Wichita's city limits.

STAFF COMMENTS:

- A. As this site is adjacent to Wichita's city limits, the applicant shall submit a request for annexation.
- B. City Engineering needs to indicate the status of City water and sanitary sewer services for this site and the need for guarantees. A guarantee shall be submitted for sewer and water extensions. An off-site sewer easement is required.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning

department for recording.

- D. City/County Engineering needs to comment on the status of the applicant's drainage plan. City Engineering has required an off-site drainage agreement and an on-site detention system. County Engineering requires renewed final drainage plan to determine impact of the drainage on the 21st St. Right of Way.
- E. In the legal description, the bearing of N0051'36"W needs to be corrected to N00°51'36"W.
- F. In accordance with the CUP approved for the site, the plat proposes three access openings along both 21st St. North and 127th St. East. No openings shall be permitted along 127th St. East until a paving guarantee is provided. Distances shall be shown for all segments of access control. In accordance with the Subdivision regulations, access points are limited to right turns only for the two openings closest to the intersection; and shall be denoted on the face of the plat. The final plat shall reference the access controls in the plat's text.
- G. In accordance with the CUP, the Applicant shall provide a guarantee for a left turn lane on 127th St. East, a left turn lane on 21st St. North to the major opening, and a continuous right turn lane on 21st Street North.
- H. On the final plat, a note shall be placed on the face of the plat indicating that this Addition is subject to the conditions of Community Unit Plan (DP-222)
- I. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on the property.
- J. On the final plat tracing, the MAPC signature block needs to reference "J.D. MICHAELIS, Chair".
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell has requested additional easements.
- T. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

Motion: That item 4/4 be approved.

MCKAY moved, **BLAKE** seconded the motion, and it carried unanimously (14-0).

4/5. SUB2001-97 - One-Step Final Plat of WILSON FARMS THIRD ADDITION located on the south side of 21st Street North, West of Webb Road.

NOTE: This is a replat of Wilson Farms 2nd Addition. The street configuration has been revised to create a cul-de-sac for Shadybrook/ Paddock Green. The lot layout has been revised to create 18 fewer lots. The site encompasses Parcels 5 and 6 of the Wilson Estates Residential CUP (DP-201).

STAFF COMMENTS:

- A. City Engineering needs to comment on the need for guarantees or a respread agreement for existing special assessments. A respread agreement is needed in addition to new petitions.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A drainage guarantee is required.
- D. The applicant shall guarantee the installation of the proposed interior private streets to the equivalent standard of a public street, but as private improvements such guarantees cannot be provided through the use of petitions.
- E. A CUP adjustment may be needed. The Applicant shall contact MAPD Zoning staff to determine if the parcel boundaries of the CUP need to be adjusted to correspond with the lot layout being platted.
- F. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot or 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- G. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. For those reserves being platted for private streets and drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the private streets and drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- J. Since this is a replat of a previous Addition involved with the ownership and maintenance of reserves for that Addition, but not being replatted by this Addition, the above covenants and/or other legal documents shall be provided which provides for this Addition to continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.
- K. The Subdivision Regulations limit cul-de-sacs to 600 feet in length and a modification will need to be approved by the Subdivision Committee. A modification has been approved.
- L. An emergency access easement has been platted extending from the turnaround of the Shadybrook cul-de-sac to Red Brush Street. The paving guarantee shall provide for construction of an all weather surface within the emergency access easement along with an appropriate barrier that will prevent non-emergency traffic from using the emergency access drive.
- M. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- N. On the final plat tracing, a note shall be placed on the face of the plat indicating that this Addition is subject to the conditions of the Wilson Estates Residential CUP (DP-201).
- O. Approval of this plat will require a waiver of the lot depth to width ratio for Lot 18, Block 1. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width.
- P. The City Fire Department /GIS needs to comment on the plat's street names. GIS has requested that Shadybrook / Paddock Green Circle be renamed as one street name.
- Q. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- R. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- S. On the final plat tracing, the MAPC signature block needs to reference "J.D. MICHAELIS, Chair".
- T. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

- V. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- W. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Y. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- BB. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE and Southwestern Bell have requested additional easements.
- CC. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

Motion: That item 4/6 be approved.

MCKAY moved, **BLAKE** seconded the motion, and it carried unanimously (14-0).

- 4/7. DED2001-00027** - Dedication of Street Right-of-Way from Judy and Ken Stansbury, for property located on the southeast corner of 58th Street South and Seneca.

OWNER/APPLICANT: Judy and Ken Stansbury

LEGAL DESCRIPTION: The west 20 feet and the north 15 feet of the north 100 feet of the west 301.33 feet of the south half of Lot 2, Bone's South Seneca Gardens, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB2001-94, and is being dedicated for additional street right-of-way along Seneca Street AND 58th Street South.

Motion: That item 4/7 be approved.

MCKAY moved, **BLAKE** seconded the motion, and it carried unanimously (14-0).

- 4/8. DED2001-00028** - Dedication of Access Control from Judy and Ken Stansbury, for property located on the southeast corner of 58th Street South and Seneca.

OWNER/APPLICANT: Judy and Ken Stansbury

LEGAL DESCRIPTION: The north 100 feet of the west 301.33 feet of the south half of Lot 2, except that part taken for street on the west, Bone's South Seneca Gardens, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB2001-94, and is being dedicated complete access control along Seneca Street.

Motion: That item 4/8 be approved.

MCKAY moved, **BLAKE** seconded the motion, and it carried unanimously (14-0).

- 4/9. DED2001-00029** - Dedication of a Utility Easement from Via Christi Regional Medical Center for property located north of the Kansas Turnpike, west of Webb Road.

OWNER/APPLICANT: Villa Christi Regional Medical Center, c/o Karen Allen

LEGAL DESCRIPTION: The east 20 feet of the south 200 feet of the following described tract:

Lot 3, East Turnpike Entrance 2nd Addition to Wichita, Sedgwick County, Kansas; except the east 143 feet thereof.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB2001-99, and is being dedicated for construction and maintenance of public utilities.

Motion: That item 4/9 be approved.

MCKAY moved, **BLAKE** seconded the motion, and it carried unanimously (14-0).

4/10. DED2001-00030 - Dedication of a Utility Easement from Dirk Schill, for property located north of Kellogg, west of 119th Street West.

OWNER/APPLICANT: Dirk R. Schill

LEGAL DESCRIPTION: Beginning at the southeast corner of Lot 2, Block A, Wells Acre, Sedgwick County, KS; thence north 235 feet along the east line of Lots 1 and 2, to the northeast corner of Lot 1, Block A, Wells Acre Addition, Sedgwick County, KS; thence east 70 feet; thence south 35 feet; thence west 50 feet; thence south 200 feet; thence east 20 feet to a point of beginning.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB2001-91 and Vacation Case No. VAC2001-25, and is being dedicated for construction and maintenance of public utilities.

Motion: That item 4/10 be approved.

WARREN moved, **COULTER** seconded the motion, and it carried unanimously (14-0).

5/1. VAC2001-00042 – Request to vacate easements and setback.

OWNER/APPLICANT: Immanuel Baptist
City of Wichita

LEGAL DESCRIPTION: Platted 15-ft building setback line running parallel to Topeka Street, on Lot 1, Immanuel Baptist Church Addition.
Platted contingent 20-ft utility easement running approximately 169-ft at an approximate 30 degree angle to the northeast corner of Lot 1, Immanuel Baptist Addition and connecting to the 20-ft utility easement, dedicated by separate instrument, running approximately 354-ft north to south through the middle of Lincoln Park

LOCATION: Generally located southeast of the S Broadway – Bayley intersection between S Broadway and S Topeka.

REASON FOR REQUEST: To allow future development.

CURRENT ZONING: Subject properties are zoned MF-29 Multifamily and LC Limited Commercial. Properties to the north and west are zoned LC Limited Commercial, there are also State/National Historic Sites to the north and west. Property to the south is zoned GC General Commercial. Property to the east is zoned MF-29 Multifamily.

The applicants are requesting consideration to vacate the platted 15-ft building setback line running parallel to Topeka Street, on Lot 1, Immanuel Baptist Church Addition. The south portion of the 15-ft building setback line will have a parking lot of a width of approximately 60-ft beginning at the southeast corner of Lot 1, Immanuel Baptist Addition, because of abutting residential, Staff recommends retaining this portion of the setback. The applicants are also requesting consideration to vacate the platted contingent 20-ft utility easement running approximately 169-ft at an approximate 30 degree angle to the northeast corner of Lot 1, Immanuel Baptist Addition and connecting to the 20-ft utility easement, dedicated by separate instrument, running approximately 354-ft north to south through the middle of Lincoln Park. The sanitary sewer in the easement in Lincoln Park was relocated last year as part of the park improvements and was paid by the Park Department. The Park Department also dedicated new easement for the relocated sanitary sewer, which includes the 169-ft run of line that runs at the approximately 30 degree angle to the northeast corner of Lot 1, Immanuel Baptist Addition.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time September 19, 2001, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described building setback line and easements and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the building setback line and easement described in the petition should be approved subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Retain the 5-ft utility easement within the vacated 15-ft building setback line that runs the length of Lot 1, Immanuel Baptist Addition, parallel to Topeka Street.
4. Retain that portion of 15-ft building setback line the runs parallel to Topeka Street that begins on the southeast corner of Lot 1, Immanuel Baptist Addition for a length, running north, of 60-ft.

BILL LONGNECKER, Staff, stated that there had been one change to Item 4. The applicant has agreed to the requested change.

GREG FERRIS, agent, indicated no problem with the requested change.

Motion: That item 5/1 be approved.

WARREN moved, **COULTER** seconded the motion, and it carried unanimously (14-0).

6. **Case No. CON2001-00051-** W.C. Selby (owner/applicant) request a Conditional Use for Agricultural Sales and Service and Riding Academy/Stable on property described as:

A tract of land in the Northwest Quarter of Section 15, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas described as follows:

Beginning at the Northwest corner of said Northwest Quarter; thence East, along the North line of said Northwest Quarter, 978.14 feet; thence South 690 feet; thence West 145 feet; thence South 100 feet; thence West 120 feet; thence Northwesterly 430 feet more or less to a point 350 feet East and 580 feet South of the Northwest corner of said Section 15; thence West 350 feet to the West line of said Section 15, thence North, along the West line of said Section 15, 580 feet to the point of beginning: except road right-of-way on the North and West. Generally located southeast corner of 87th Street South and Hydraulic.

BACKGROUND: The applicant is seeking a Conditional Use to permit a "riding academy / stable" and "agricultural sales and service" on 13.2 acres located at the southeast corner of 87th Street South and Hydraulic. Since 1983-1984, the applicant has operated a non-conforming boarding stable / riding academy with horse tack sales at this location. The applicant seeks to make the stable and related horse activities conforming, and to add "agricultural sales and service" (sale of horse tack and horse/stock trailers both indoors and outdoors) to the uses permitted on the property. The applicant owns the adjoining land located to the east and south of the application area. The applicant's home is located on the property south of the application area.

The attached site plan depicts the locations of the various existing office, barns, shop, tack room and pens as well as the proposed location for the trailer sales. The trailer sales are to be located along the east line of the application area, 360 feet south of 87th Street and 800 feet east of Hydraulic. An existing 80 by 120 foot building is to house the sales and service for the trailers. An area immediately north of the building would also be used for outdoor display, service and sales. An area 110 by 145 feet is shown south of the existing building that would serve as storage for trailers, tack and related items.

All surrounding property is zoned "RR" Rural Residential. Property to the north is fallow cropland; to the east is an airstrip, owned by the applicant, and cropland; to the south is the applicant's personal residence; and to the west are large-lot residences.

The Unified Zoning Code defines agricultural sales and service as an establishment primarily engaged in the sale or rental of farm tools and implements, feed and grain, tack, animal care products, propane, butane, anhydrous ammonia, farm supplies and the like, and including accessory food sales and machinery repair services. The "RR" district permits on-site agricultural uses to have 12 square feet of signage, with lighting to be arranged to reflect away from adjacent premises.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: "RR" Rural Residential; vacant cropland
SOUTH: "RR" Rural Residential; residence
EAST: "RR" Rural Residential; airstrip
WEST: "RR" Rural Residential; large-lot residential

PUBLIC SERVICES: Traffic counts are not available. Hydraulic is a two-lane paved road with 40 feet of half-street right-of-way. Hydraulic is shown on the 2030 "Transportation Plan" map as being a 2-lane arterial. 87th Street South is a two-lane sand and gravel road with 25 feet of half-street right-of-way. Standard right-of-way for these two streets is 60 feet for Hydraulic and 50 feet for 87th Street. The applicant should meet with Sedgwick County Code Enforcement to determine what, if any, paving will be required for drives and parking areas. The applicant should also meet with County Public Works to determine if any floodplain issues will affect the proposed project.

CONFORMANCE TO PLANS/POLICIES: The "Sedgwick County Development Guide" map depicts the site as appropriate for "rural" uses. The "rural" category denotes land that is located beyond the 2030 urban service boundary for Wichita and it is also beyond the growth areas for any of the smaller communities located within Sedgwick County. The rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provision for future water and sewer services.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The site shall be developed and maintained in general conformance with the approved site plan. Construction of facilities approved by this Conditional Use permit shall be begin within one year of the approval of this request or the Conditional Use shall become null and void. In addition to those uses permitted in the "RR" Rural Residential district, the site shall be limited to the following uses: boarding, breeding and training of horses and riders and agricultural sales and service, including display and sale of horse and stock trailers. Display and sale of trailers shall occur only in the area depicted on the site plan.
- B. All applicable permits and licenses shall be obtained in a timely basis (e.g. on-site sewage and water wells, building permits, zoning and animal waste handling and disposal).
- C. Animal wastes from areas where the animals have been confined shall be gathered as needed and as weather permits to prevent flies and odor. The gathered waste shall be disposed of in a manner acceptable to the Wichita-Sedgwick County Health Department.
- D. The horse stable facility shall be maintained free of rodent harborage, including but not limited to improperly stored materials, enclosed partition walls and wooden floors closer than 12 inches to the ground. Grain or protein feed shall be stored in tightly covered rodent-proof metal container or rodent-proof bins. Use shall be made of rodenticide and insecticides for control of rodents and flies. The horse stable shall be cleaned at least once each week, or more often if necessary, to prevent or control odors, fly breeding and rodent infestation.
- E. Weeds and grass around the stable and corral areas shall be controlled and kept at a height that they do not provide a fire hazard or harbor vectors such as mosquitoes or vermin.
- F. The horse stable and any associated board fences or wooden horse shelters shall be protected from deterioration by an appropriate water proofing method. The stable building, fences and shelters shall be constructed of dimensioned building materials.
- G. The maximum number of horses to be boarded at any one time is 50, plus any foals which may be stabled with the mare for a period of one year, at which point they would be stabled separately and count toward the specified limit of 50 horses. The limit of 50 horses includes the applicant's horses. In addition to the 50 horses that may be boarded on-site, an additional 50 horses may be permitted for equestrian events. Additional non-boarded horses may be permitted for equestrian events so long as the total number of horses on-site at any one time does not exceed 100.
- H. All equestrian facilities shall be used only by the property owner, the owner's customers and their guests.
- I. The buildings and structures associated with the horse stable shall be open to unannounced inspection by Sedgwick County Department of Code Enforcement and Health Department personnel during reasonable hours to insure continued compliance with the requirements of this Conditional Use.
- J. All outdoor arena related activities shall cease by 11:00 P.M., and any arena related outdoor lighting shall be turned off by 11:30 P.M. Outdoor arena activities shall not begin before sunrise.
- K. The number of non-resident employees shall not exceed five persons.
- L. No public address systems can be employed in a manner that permits the sound to be heard beyond the applicant's property boundaries.
- M. The applicant shall dedicate 20 feet of right-of-way along Hydraulic and 25 feet of right-of-way along 87th Street within 90 days of the approval of the Conditional Use.
- N. A revised site plan shall be submitted within 30 days of approval of the Conditional Use which defines the location for customer parking and the number of spaces provided as required at a rate established by County Code Enforcement.
- O. Any violation of the conditions of approval of this Conditional Use shall declare the Conditional Use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. All surrounding land is zoned "RR" Rural Residential. There are large lot residences and farmstead located, cropland and an airstrip located nearby. The character of the area is rural.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "RR" Rural Residential which permits agricultural pursuits as well as large-lot residential uses. The site is currently developed with a residence and a nonconforming horse boarding, training and breeding facility. The site could continue to be used as a nonconforming stable. Agricultural sales and service and a riding academy and stables are permitted by Conditional Use permit in the "RR" district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The stable exists today, and apparently operates without complaint from nearby property owners. Approval of the agricultural sales and service use will introduce a more intense use than crop production or residential uses, however there is adequate distance between the proposed use and existing residences to minimize detrimental impacts. Also, the conditions placed on the development by the Conditional Use and various code requirements further minimize negative impacts.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Sedgwick County Development Guide" map depicts this site as appropriate for "rural" uses. The rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provision for future water and sewer services. Equestrian activities and agricultural sales and service uses are appropriate for rural areas and would be consistent with the Plan's recommendations
5. Impact of the proposed development on community facilities: Traffic can be expected to increase in the area, but with the requested right-of-way dedication, road facilities could be improved to meet future demands.

MILLER indicated that four people spoke in opposition to the case at the Haysville's Planning Commission hearing. Opposition centered upon a conflict with County Code Enforcement officials, but also dealt with burning on the site.

MILLER indicated that the stable on-site is a legal non-conforming use, but the Conditional Use will make it a conforming use.

MCKAY asked about the requirement for construction of the facility to begin within one year.

MILLER explained that the requirement pertained to a parking area and a storage facility for trailers and that the one year requirement is not critical to staff and could be removed.

MICHAELIS asked when one year would begin.

MILLER explained process.

WARNER asked if Haysville approved.

MILLER indicated they did.

GAROFALO asked about parking requirements.

MILLER indicated that condition "N" addressed the parking requirements, including a revised site plan requirement.

WILEY, applicant's agent, indicated that they would like the requirement for construction within one year removed.

WILEY indicated that County Code Enforcement is agreeable to 8 parking spaces that will be shown on the revised site plan.

WILEY indicated that the applicant wants a contingent right-of-way dedication rather than an outright dedication.

Motion: To approve subject to staff comments, with the deletion of the second sentence on Item A, and changing the dedication to a contingent dedication instead of an outright dedication

MCKAY moved, **ANDERSON** seconded the motion, and it carried unanimously (14-0).

7. **Case No. ZON2001-00054** – Mid American Credit Union (c/o Lowell E. Richardson, owner) request zone change from "LC" Limited Commercial to "GC" General Commercial on property described as:

Lot 2, First Credit Union Addition, Wichita, Sedgwick County, Kansas; except the east 250 feet and except highway right-of-way. Generally located north of Kellogg and east of Tyler (8404 W. Kellogg)

BACKGROUND: The subject property is located north of Kellogg and east of Tyler. The subject property is a portion of a platted lot containing 0.27 acres that currently is developed with a parking lot and drive-through for the credit union. The applicant owns the properties adjoining the site to the east and west and both are zoned "GC" General Commercial. The applicant would like for the entire ownership to be zoned "GC" General Commercial to allow for the sale of vehicles and boats repossessed by the credit union.

On June 29, 2000, the MAPC voted (12-0) to rezone (ZON2000-00021) a portion of the applicant's property located west of the subject property from "LC" Limited Commercial to "GC" General Commercial. At that time, the applicant was under the impression that the rezoning included the subject property; however, the legal description submitted by the applicant did not include the subject property. Therefore, an additional zone change request is required to rezone the applicant's entire ownership to "GC" General Commercial.

The City of Wichita and the applicant have recently negotiated a right-of-way agreement for the proposed expansion of West Kellogg. As a result, the applicant intends to demolish all three of his buildings and is in the process of constructing one large credit union on-site. Since the credit union routinely has clients who default on their loans for vehicles and boats, the applicant wants to display repossessed items on-site until they are sold.

The character of the surrounding area is commercial. To the north across McCormick is a Home Depot on property zoned "LC" Limited Commercial. To the west is the applicant's new credit union building under construction on property zoned "GC" General Commercial. To the east is the applicant's current credit union that will be demolished on property zoned "GC" General Commercial. To the south across Kellogg is a motel on property zoned "LI" Limited Industrial.

CASE HISTORY: The property is platted as part of the First Credit Union Addition that was approved in 1985.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC",	Limited Commercial	Home Depot
EAST:	"GC"	General Commercial	Existing credit union building
SOUTH:	"LI"	Limited Industrial	Motel
WEST:	"GC"	General Commercial	New credit union under construction

PUBLIC SERVICES: Public sanitary sewer and water service are currently available to this location. The site has access to both Kellogg Drive and McCormick. Current traffic volumes on these streets are not available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterial streets and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be **APPROVED**.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Adjacent properties are zoned "LC" Limited Commercial, "GC", General Commercial and "L" Limited Commercial. The character and uses on surrounding sites are commercial.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "LC" General Commercial, which does not permit the outdoor vehicle sales uses requested the applicant. A Conditional Use could be granted to permit vehicles sales in the current "LC" zoning. however, the remainder of the applicant's property is zoned "GC" General Commercial, and it more logical to create a single "GC" zoning lot to permit the vehicle sales use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. This site is currently surrounded by commercial uses. Approval of this request should not negatively impact nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "commercial" development. The subject property conforms to the Locational Guidelines regarding commercial development.
5. Impact of the proposed development on community facilities: No negative impacts on community facilities were identified at the time this report was prepared.

SCOTT KNEBEL, Planning staff, presented the case and reviewed slides.

GARY WILEY, agent, indicated this case rectified a mistake with the legal description made in an earlier case involving this property.

Motion: The request be approved.

HENTZEN moved, **COULTER** seconded the motion, and it carried unanimously (14-0).

8. **ZON2001-00055** – Lymon W. Edwards request zone change from "TF-3" Two-Family to "NO" Neighborhood Office on property described as:

Lots 10 and 11, Block 7, Westway Park, an Addition to Wichita, Kansas, Sedgwick County, Kansas.

Generally located southwest of the Seneca – Pawnee intersection, specifically the southwest corner of the Crawford – Seneca intersection.

BACKGROUND: The applicant is requesting "NO" Neighborhood Office on two, platted lots (Lots 10 & 11, Block 7, Westway Park Addition) located on the southwest corner of the Seneca – Crawford intersection, one block southwest of the Seneca – Pawnee intersection. Lot 11, is a corner lot with Lot 10 the first lot, on Crawford, to the west of it. The properties are currently zoned "TF-3". Lot 11 is developed with a single-family residence, with the house and its driveway oriented onto Seneca. There is wooden fence on the south (abutting a single family residence on SF-5 zoning) and east sides. Lot 10 is not developed and appears to be part of the lawn of Lot 11, there is no access onto Lot 10, via a curb cut. Currently the applicant has converted the attached garage into an insurance office; per UZC, this is a permitted home occupancy. The owner intends to redevelop the property as an office, and move to a different home. The two lots together appear to be large enough to be developed into a non-residential use.

There is a large retail strip center (CUP DP-21, across Crawford Street) north of the properties, which contains restaurants, offices and retail. The strip extends 2 blocks west of Seneca and takes up the first block south of the Pawnee – Seneca intersection. There is access to the strip (besides the access off of Seneca and Pawnee) from Crawford Street, facing the applicant's property. There is mixed retail, a movie theater, restaurants, fast food restaurants, and offices to the northeast and southeast (across Seneca) of the subject properties. There appears to be only two single-family residences on the east side of Seneca from Pawnee to 31st Street South. Southwest of the properties along Seneca from Pawnee to 31st Street South, there are single-family residence broken by churches and offices. These non-residential uses and structures usually occupying either the corner lot or lots; the west side of Seneca has more single family residential zoning and development than the east side.

The proposed conversion of the property to office use would entail providing off-street parking and screening in accordance with the zoning code. Compatibility setbacks would not be required if the conversion does not involve new construction. Similarly, the Landscape Ordinance would not be triggered unless the increased value after conversion to the non-residential use was more than 50 percent of the original improvements.

CASE HISTORY: The property was platted as the Westway Park Addition and recorded on October 31, 1955.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" Limited Commercial CUP/DP-21, restaurants, retail,
"GO" General Office offices
SOUTH: "SF-5" Single Family Residential single-family residences, offices
"GO" General Office churches
EAST: "LC" Limited Commercial mixed retail, restaurants, offices
"GO" General Office
WEST: "SF-5" Single-family residences

PUBLIC SERVICES: The property is located along Seneca, a five-lane arterial street. The traffic count for year 2000 was 19,341 cars per day (ADTs) south of the Seneca and Pawnee intersection, which is the closest major intersection. No street projects are included in the C.I.P. The properties have one drive entrance onto Seneca, from Lot 11. The properties have a platted 16-ft utility easement running along their south sides. Public water and sewer services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this property as being "commercial".

"Office Locational Guidelines" of the *Comprehensive Plan* include (1) being located adjacent to arterial streets; (2) having local, service-oriented offices incorporated within or adjacent to neighborhood and community scale commercial development, and (3) having low-density office use as a transitional land use between residential uses and higher intensity uses.

RECOMMENDATION: The purpose of the "NO" Neighborhood Office district is to accommodate very low intensity office development generally appropriate near residential neighborhoods. The *Comprehensive Plan* "Wichita Land Use Guide" designates this property as either high density residential or commercial. Single-family residential uses abut this site to the south and west; although office uses, churches, and commercial uses are also near this property. The character of the non-single family residential land uses near this property, coupled with its location along a major arterial with a significant traffic volume, argues that small-scale office use with a residential character may be a reasonable alternative to the current single-family use. So long as the property maintains a residential design, provides ample compatibility setbacks and landscape buffers, and provides adequate parking, the effect of an office use on adjacent single-family residences should be minimized. Also, staff recommends that a change in zoning require the current 16-ft utility easement to be increased with a 2-ft dedication, bringing the utility easement within 2-ft of the current 20-ft standard.

Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the mentioned 2-ft utility easement dedication and the following Protective Overlay.

1. The property shall be developed and/or redeveloped with a building that has a residential character, and that includes brick, masonry, wood or composite siding; a double-pitched roof with a minimum vertical rise of 4 inches for every twelve inches; and a maximum height of 25 feet.
2. Freestanding signs shall be monument-type with a maximum height of 8 feet.
3. Per Traffic Engineer's recommendation the existing access onto Seneca will be closed with access being onto Crawford Street.
4. Lighting shall conform to lighting standards in Sec. IV -B.4 of the Unified Zoning Code and be limited to no more than 14 feet in height.
5. Parking shall meet the UZC requirements.
6. Landscaping shall be provided that is equivalent to a landscaped street yard, parking lot landscaping and screening along Seneca, and a buffer along the property lines adjoining a residential district, as required in the City of Wichita Landscape Ordinance. A Landscape Plan shall be submitted to the Director of Planning for approval prior to the issuance of a building permit.

DAB IV considered ZON2001-00055 at their Wednesday October 3, 2001 meeting. The agent for the case, Gary Wiley, agreed with Staff comments with the request that the DAB consider changing Protective Overlay conditions;

- (1) The change in #1 is in regards to the minimum vertical rise in the roof from 4 inches for every 12 inches to the existing rise, which is closer to a minimum vertical rise of 3 inches for every 12 inches.
- (2) Allow Traffic Engineer's to consider the applicant's proposal to change #3 to allow the existing opening/access onto Seneca to remain open as an in only and have an exit onto Crawford, per Exhibit I. The exhibit was not available to Staff prior to the DAB IV meeting.

No one spoke in opposition to the request for the zoning change of "TF-3" to "NO". DAB IV recommended approval of the zoning change with the Protective Overlay modified to reflect the applicant's request for the changes in #1 and #3.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property adjoining the application area to the north is zoned "LC" and "GO"; it is a large retail strip center, with mixed retail, restaurants and office. The properties across Seneca to the southeast and northeast are zoned "LC" and "GO", with development being mixed retail, restaurants, movie theater and office. Properties to the south are zoned "SF-5" and "GO" with development being office, mixed retail and churches. The character of the property surrounding the application area, along Seneca, is becoming less desirable for traditional single-family homes due to traffic volume and the predominance of non-residential zoning. As a result, more intensive zoning has been approved in this area.
2. The suitability of the subject property for the uses to which it has been restricted: The property could continue to be used for a single-family residence. However, the predominance of non-residential zoning and the traffic volume generated by the non-residential development makes this property less attractive for single-family residential use.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: So long as the property is developed with strong site development requirements to mitigate the impact of parking, lighting, and maintain the residential character of the structure, the impact on surrounding residences should be reduced. The effect of approving this request for "NO" might be to encourage adjacent residences to seek a similar approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: One of the purposes of the "NO" district is to be a very low -intensity office use that is compatible with nearby residential use, so long as site design compatibility requirements are included in the approval. The Comprehensive Plan shows this site to be appropriate for commercial use.
5. Impact of the proposed development on community facilities: The main impact would be to increase turning movements at the mid-block location on Seneca. Planning for future access management as this frontage redevelops will help minimize the number of traffic conflicts and accidents.

LONGNECKER, Planning staff, showed slides and introduced the case. Changes to the Protective Overlay, recommended by staff, to allow for the current roof pitch and to keep access on Seneca were requested by the applicant. Planning staff was opposed to continuing access to Seneca. There was discussion concerning the pros and cons of access control along Seneca.

Motion: Application be approved as presented, subject to Item 3 being deleted, with "in" only access on Seneca, and accept the roof pitch.

WARREN moved, **HENTZEN** seconded the motion, and it carried (9-5). (**MARNELL, WARNER, GAROFALO, BLAKE, BISHOP** opposed).

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9. **CON2001-00049** – Louis and Stephanie Falcon (owners) request a Conditional Use to allow a rural home occupation on less than 20 acres on property described as:

A tract beginning at the Northeast corner of the East Half of the Northwest Quarter of Section 27, Township 25 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas, thence South 365 feet; thence West 764 feet; thence North 115 feet; thence West 250 feet; thence North 250 feet; thence East along the North line of said Section, 1,014 feet to the point of beginning. Generally located on the south side of West 93rd Street North, between 263rd West and 247th West (25701 West 93rd North); within the Mt. Hope area of influence.

BACKGROUND: The applicant is requesting a Conditional Use for a rural home occupation on a 7.84-acre un-platted lot located along the south side of West 93rd Street North, between 263rd West and 247th West. Agricultural fields surround the application area, the nearest residential neighbor lies over 1,100 feet to the west. The property is zoned "RR" Rural Residential and developed with a single-family residence, a barn and a garage. The application area is on a lagoon sewage system. The owners intend to operate a custom auto paint shop in the existing garage with no outside employees. The applicants propose, in the attached business plan, to use only the existing 2,700 square foot garage, to install an industrial spray booth with an air filtration system, to comply with all EPA standards, to operate a custom paint business only, and to store no cars or parts outside the garage.

The application area is in the Equus Beds Groundwater Management District #2, a water source for the City of Wichita, and therefore raises concerns about hazardous material management for the requested use. The Equus Beds District staff considers this area a "sensitive" groundwater area. Sedgwick County Environmental Code, and both County and Kansas Department of Health and Environment (KDHE) policies prohibit any commercially generated waste, to include effluent from commercial floor drains, from being discharged into lagoons or septic systems. KDHE requires a hazardous material license for any business generating more than 55 pounds of hazardous material per month; KDHE then monitors the licensed businesses.

Sedgwick County Code Enforcement and Fire Department require building approval for the proposed use. County Fire Code also requires an approved spray booth for the proposed use.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH:	"RR"	agricultural fields
SOUTH:	"RR"	agricultural fields
EAST:	"RR"	agricultural fields
WEST:	"RR"	agricultural fields, farm residence

PUBLIC SERVICES: The property is located along West 93rd Street North, a two-lane, township gravel road. The traffic count on this section of West 93rd Street North for year 2000 was approximately 130 cars per day (ADTs). The property has one drive entrance onto West 93rd Street North.

CONFORMANCE TO PLANS/POLICIES: The "Sedgwick County Development Guide" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as "rural."

The *Wichita-Sedgwick County Unified Zoning Code* permits "Automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works, and overhaul conducted entirely within an enclosed structure with no outdoor storage of

vehicles, parts, or equipment;" as a rural home occupation "by right." However, the application area is less than 20 acres, and therefore must be granted a Conditional Use for a rural home occupation.

RECOMMENDATION: The Zoning Code puts limits on rural home occupation size, storage, employment, signage, noise, and other factors that make these uses compatible with their surrounding areas. The application area is isolated from residential neighbors, and the applicants volunteer to use best practices within an existing, adequate, accessory structure.

Planning staff feels that several significant conditions should be used to protect the Equus Bed Groundwater Management District #2 from hazardous materials. Equus Bed Groundwater Management District #2 staff concurs with planning staff, and recommends that the applicant be required to obtain a hazardous material license from KDHE. Subject to the recommended conditions, planning staff feels that this request meets the Zoning Code intent of allowing Conditional Uses for rural home occupations on properties of less than 20 but greater than 5 acres.

Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions.

1. The rural home occupation shall be for a vehicle paint shop only, shall take place in the existing garage only, shall have no outdoor storage, and shall permit no additional employees.
2. The applicant shall install a paint booth and air filtration system that meets all applicable codes, policies and standards.
3. The applicant shall have the existing garage building inspected to ensure that it meets all applicable building and fire codes for the intended use of vehicle painting.
4. The applicant shall develop a hazardous material waste storage and disposal plan to meet all applicable codes, policies and standards. This plan shall include the safe storage of all commercial waste, the prevention of any commercial waste from entering the application area lagoon, to include floor drains from the garage, and the safe containment of any spilled commercial waste.
5. The applicant shall submit the "Regulated Waste Activity Notification" form to Kansas Department of Health and Environment, and obtain a regulated waste license from the Kansas Department of Health and Environment.
6. Development and maintenance of the site shall be in conformance with the approved site plan.
7. This Conditional Use permit shall be rendered null and void if the site is not operated or maintained in conformance with adopted conditions of approval, or if operations have not begun within one year of approval.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: All property surrounding the application area is used for agricultural purposes, the nearest residential neighbor is over 1,100 feet to the west. Provided the rural home occupation takes place in the existing garage only, with an EPA approved filtration system, and with no outdoor storage, this occupation should have no effect on the surrounding area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential, which primarily permits large lot residential uses. The site could continue to be used without the Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: So long as the rural home occupation takes place in the existing garage only, with an EPA approved filtration system, complies with all applicable laws and policies, and has no outdoor storage, this occupation should have no effect on the surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested conditional use is in conformance with the *Wichita-Sedgwick County Unified Zoning Code* provisions for rural home occupations on properties of less than 20 but greater than 5 acres.
5. Impact of the proposed development on community facilities: The only impact would be a traffic increase on West 93rd Street North, which had a relatively low traffic count in 2000 of approximately 130 vehicles per day.

JESS MCNEELY, Planning staff, reviewed the staff report and showed slides. He indicated that Mt. Hope has recommended approval.

Motion: Approve subject to staff comments.

MARNELL moved, **WARNER** seconded the motion, and it carried unanimously (14-0).

10. **ZON2001-00058** – Brentwood Development Inc. c/o Steve Miller (owner/applicant) request z one change from "SF-20" Single-Family Residential to "MF-18" Multi-Family Residential on property described as:

Parcel 1: That part of the Southwest Quarter of Section 33, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas described as commencing at the Northwest Corner thereof; thence South 00 degrees 15'38" West along the West line of said Southwest Quarter, 447.18 feet; thence North 89 degrees 41'29" East, 50 feet for a place of beginning; thence continuing N 89 degrees 41'29" East, 93.77 feet to the P.C. of a curve to the left, having a radius of 147.14 feet and a central angle of 44 degrees 04'56"; thence Northeasterly along said curve, 113.21 feet to the P.T. of a curve; thence North 45 degrees 36'33" East, 85.03 feet; thence South 00 degrees 15'38" West, 322.99 feet to a point on the North line of Lot 1, Block 1, Christ Community Church Addition, Wichita, Sedgwick County, Kansas; thence N 89 degrees 46'22" West, along the North line of said Lot 1, 256.20 feet to the Northwest Corner of said Lot 1; thence N 00 degrees 15'38" East, 219.99 feet to the place of beginning.

Parcel 2: That part of the Southwest Quarter of Section 33, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas described as commencing at the Northwest Corner thereof; thence South 00 degrees 15'38" West along the West line of said Southwest Quarter, 447.18 feet; thence North 89 degrees 41'27" East, 143.77 feet to the P.C. of a curve to the left, having a radius of 147.14 feet and a central angle of 44 degrees 04'56"; thence Northeasterly along said curve, 113.21 feet to the P.T. of said curve; thence North 45 degrees 36'33" East, 85.03 feet for the place of beginning; thence continuing North 45 degrees 36'33" East, 136.16 feet to the P.C. of a curve to the right, having a radius of 318.94 feet and a central angle of 44 degrees 04'57"; thence Northeasterly along said curve 245.39 feet to a point of reverse curve, said point being the P.C. of a curve to the left, having a radius of 462.30 feet and a central angle of 31 degrees 56'25"; thence Northeasterly along said curve 257.72 feet to the P.T. of said curve; thence North 57 degrees 45'04" East, 44.75 feet; thence South 32 degrees 14'56" East, 85.32 feet to the P.C. of a curve to the left, having a radius of 232.00 feet and a central angle of 58 degrees 03'35"; thence Southeasterly along said curve, 235.09 feet to the P.T. of said curve; thence North 89 degrees 41'29" East, 171.81 feet to a point 1321.25 feet East of the West line of said Southwest Quarter, as measured at right angles; thence South 00 degrees 15'38" West, 429.05 feet to a point on the North line of Lot 1, Block 1, Christ Community Church Addition, Wichita, Sedgwick County, Kansas; thence North 89 degrees 46'22" West, along the North line of said Lot 1, 1015.06 feet to a point 256.20 feet East of the Northwest Corner of said Lot 1; thence North 00 degrees 15'38" East, 322.99 feet to the place of beginning. Generally located ½ mile north of Pawnee and east of Webb Road.

BACKGROUND: The applicant requests a zone change from "SF-20" Single-Family Residential to "MF-18" Multi-Family Residential on a 1.4 acre portion of land within an unplatted tract, located on the east side of Webb Road, ½ mile north of Pawnee. The applicant wishes to change the zoning to match approved zoning for the remainder of the tract, to include a protective overlay. This zone change request is intended to rectify a design change since a previous rezoning of this tract. The original design for this development included Mount Vernon as a through street; a zone change from "SF-20" to "MF-18" was approved based on this original design. The applicant since changed the development design, eliminating Mount Vernon as a through street. Because the advertised legal description for the original, approved zone change did not include the current application area, the applicant must now rezone this area.

The applicant indicated, when the previous zone change was approved, that the development will consist of patio homes at a density of approximately six units per acre. Multi-family zoning is requested to permit condominium ownership, consisting of multiple dwelling units on a single lot. The original zone change request was approved, with a protective overlay, by MAPC (10-0) on December 7, 2000, and then approved by the Board of County Commissioners (4-0) on January 17, 2001. The protective overlay reads as follows:

1. Residential development on the site shall be developed in general conformance with a development plan to be approved by the Planning Director prior to the issuance of building permits.
2. The development plan may contain a mixture of housing types as long as the overall residential density of the development does not exceed 6 units per acre.

A final plat (SUB2000-00055, Maple Shade Addition) was approved by MAPC (14-0) on July 5, 2001. A revised final plat was approved by MAPC (10-0) on August 23, 2001. The revised design requires this requested zone change. The application area, and its entire development, anticipates annexation by the City of Wichita.

CASE HISTORY: A zone change from SF-20 to MF-18 was approved on this tract, excluding the current application area, on January 17, 2001.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"; "NO"	Single-family residences
SOUTH:	"SF-5"	Church
EAST:	"SF-20"	Undeveloped
WEST:	"MF-18"; "NO"	Utility substation; Single-family residences

PUBLIC SERVICES: The site has access to Webb, a recently widened four-lane arterial street with 2000 traffic volumes of approximately 10,275 vehicles per day. The 2030 Transportation Plan estimates that traffic volume on Webb will increase to approximately 12,200 vehicles per day. Public water and sewer are available or can be extended to serve the site.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the 1999 *Update to the Comprehensive Plan* identifies this area as "Low-Density Residential". Low Density Residential provides for the lowest density (1 to 6 units per acre) of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivisions, and planned developments with a mix of housing types that may include townhouse and multi-family units. The requested "MF-18" Multi-Family Residential zoning does not conform to the Land Use Guide due to the higher permitted densities; however, under the protective overlay approved for the remainder of the tract, the overall development will not exceed 6 units per acre.

RECOMMENDATION: Based upon the information available prior to public hearings, planning staff recommends that the request for "MF-18" Multi-Family Residential zoning be **APPROVED**, subject to platting within 1-year and subject to the following provisions of the Protective Overlay approved for the remainder of the site:

1. Residential development on the site shall be developed in general conformance with a development plan to be approved by the Planning Director prior to the issuance of building permits.
2. The development plan may contain a mixture of housing types as long as the overall residential density of the development does not exceed 6 units per acre.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by developing single-family residential and institutional uses. The requested zone change will make this portion of property consistent with the zoning approved for the remainder of the tract.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-20" Single-Family Residential, which accommodates large lot residential development and complementary land uses. By annexing the property into the City of Wichita, the property's zoning could be automatically changed to "SF-5" Single-Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. The subject property, by its size and shape, is not suitable for single-family development. The application area can be a part of the overall tract development with the requested zone change.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested zone change, if subject to the recommended Protective Overlay, should have no detrimental affect on nearby residential properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Under the recommended Protective Overlay, this request meets the *1999 Update to the Comprehensive Plan* "Wichita Land Use Guide" designation of this area as "Low -Density Residential."
5. Impact of the proposed development on community facilities: No impacts on community facilities have been identified.

JESS MCNEELY introduced the case and showed slides. He indicated the District Advisory Board has recommended approval.

RANDY JOHNSON, agent, indicated he agreed with staff comments.

Motion: To approve.

COULTER moved, BLAKE seconded the motion, and it carried unanimously (14-0).

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11. **ZON2001-00057** – Clarence A. Lieber and Juanita Lieber (owners) request zone change from "B" Multi-Family to "GC" General Commercial on property described as:

Lots 31 and 33, on Pennsylvania, Lots 36, 38 and 40, on Hydraulic, Mathewson's 4th Addition to the City of Wichita, Kansas, Sedgwick County, Kansas. Generally located between Pennsylvania and Hydraulic, north of East 2nd Street (345 North Hydraulic Avenue).

BACKGROUND: The applicant is requesting "GC" General Commercial zoning on .7-acres between Pennsylvania and Hydraulic, north of East 2nd Street (345 North Hydraulic Ave). The property is currently zoned "B" Multi-Family. Two of the five application area lots are developed with single-family homes, one located on Hydraulic and the other on Pennsylvania; these homes are currently used as rental properties. The remaining three application area lots are vacant.

The application area abuts "GC" zoned property to the north and south, and faces "B" zoned property across Hydraulic and Pennsylvania to the east and west. The neighboring property to the north on Hydraulic was rezoned from "B" to "GC" earlier this year. The area surrounding the application property is characterized by several vacant lots, single-family housing in poor condition, auto based businesses, and contractor-based businesses.

The proposed zone change, from "B" to "GC," would require conformance to all property development standards in the *Unified Zoning Code*.

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH: "GC," "B" vacant lot, plumbing contractor, single-family homes
SOUTH: "GC" vacant lots, single-family homes, vehicle sales, general commercial
EAST: "GC," "B" single-family homes, general commercial
WEST: "GC," "B" single-family homes, general commercial

PUBLIC SERVICES: The property is located along Hydraulic, a four-lane arterial street, and along Pennsylvania, a two-lane residential street. The traffic count in March of 2000 along this section of Hydraulic was 4,839 cars per day (ADTs). The projected traffic volume for 2030 is 4,942 cars per day. Pennsylvania is a small residential street, and has had no traffic counts or projections.

The existing half-width right-of-way for Hydraulic at the application area is 30 feet, while the existing half-width right-of-way for Hydraulic to the immediate north and south of the application area is 50 feet. No street projects are included in the C.I.P. for the immediate area. The existing rear alley utility easement is 14.8 feet for the Hydraulic facing lots, and 17.4 feet for the Pennsylvania facing lots.

City water and sewer are available at the application area.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" & the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as "Commercial."

"Commercial Locational Guidelines" of the *Comprehensive Plan* include (1) located adjacent to arterial streets; (2) coordinated with mass transit routes, high-density residential, employment and other intensive uses; (3) having required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses; and (4) located in compact clusters or nodes versus extended strip developments.

RECOMMENDATION: This zone change request is in conformance with the *Comprehensive Plan* "Wichita Land Use Guide" and "Commercial Locational Guidelines." The property is currently zoned "B" Multi-Family, the highest density residential zone. The character of the surrounding "GC" zoned commercial uses suggests that a commercial use at this location could be less intensive, in terms of traffic generation, than multi-family development under the current zoning. Likewise, the *Unified Zoning Code* property development standards requires screening and landscaping, and regulates lighting to mitigate negative impacts on surrounding residential properties. Vehicular access control can be maintained at the application area by permitting only one point of access from Hydraulic and Pennsylvania.

Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the dedication of access control, with one point of access from Hydraulic and Pennsylvania; subject to the dedication of 20 feet of right-of-way on Hydraulic; and subject to the dedication of 2.6 feet of rear alley utility easement.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Three of four abutting properties are zoned "GC" General Commercial, one of which received a zone change from "B" earlier this year. Nearby properties are developed with commercial and residential uses. The character of the area is in transition from residential to nonresidential uses. All new construction in the area has been for nonresidential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with residences, or a number of other uses under "B" zoning, however, the area is becoming less desirable for infill residential uses. The location of the application area along a major arterial street makes it suitable for commercial uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of "GC" zoning will permit uses not currently permitted at this location, screening and landscaping requirements will mitigate impacts on nearby residential properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested change in zoning classification is in conformance with the *Comprehensive Plan* "Wichita Land Use Guide," and it is in conformance with all the commercial locational guidelines of the plan.
5. Impact of the proposed development on community facilities: "GC" uses are capable of generating increased traffic. Therefore, the dedication of additional street right-of-way and limiting access control would address potential increased demand on community facilities. Also, the city is working towards a standard of 20-foot rear alley utility easements. Several of the neighboring properties along the application area alley have also dedicated easements in the past, working towards the 20-foot easement objective.

JESS MCNEELY presented the staff report and reviewed the slides. Two issues need to be addressed which concern the dedication of access control with one point of access from Hydraulic and dedication of 20 feet of right of way along Hydraulic and 2.6 feet dedication for the alley.

HENTZEN asked for clarification regarding previous dedications along Hydraulic.

BARFIELD asked for clarification regarding access controls.

KIM EDGINGTON, agent, indicated they want two access points along Hydraulic. The applicant is intending to sell the site to a neighboring property owner for leased contractor space. They need the two access points for truck traffic circulation since these sites will not be used for retail type sales. Contingent dedication of right-of-way would be o.k., not an outright dedication.

HENTZEN asked how wide the lots are?

EDGINGTON indicated they were 50-foot lots for 150 feet.

MCKAY asked for a clarification on future ownership. He wanted to know if her client owned the land to the north on Hydraulic.

EDGINGTON said no.

WARREN asked questions about Hydraulic circulation.

MARNELL asked Krout what the effect of a contingent right-of-way vs. dedication had on setbacks.

KROUT explained that a contingent dedication would eliminate the opportunity for parking once the right-of-way is taken.

BARFIELD wanted to know if the applicant had immediate plans for the property along Pennsylvania.

EDGINGTON stated it would be used for parking likely.

A general discussion regarding access management in general and existing access control along this segment of Hydraulic was had.

Motion: Approve the application as it presented subject to a revision in the access control on Hydraulic to permit two openings and incorporate staff's other comments.

WARREN moved, **HENTZEN** seconded.

Additional discussion concerning ownership of the lots adjoining the application are was had.

SUBSTITUTE MOTION: Approve subject to staff comments, one-opening, and the other comments apply.

MARNELL moved, **BISHOP** seconded the motion, and it carried (11-3). (**HENTZEN, WARREN, ANDERSON** opposed).

12. **CON2001-00050** – Brooks, Inc., c/o Dr. John Brooks request a Conditional Use to allow Animal Care, General on property described as:

That part of the Northwest Quarter of Section 12, Township 28 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas, described as: Beginning at a point on the West line of said Northwest Quarter at an assumed bearing of South 0 degrees 17'50" East a distance of 795.00 feet from the Northwest corner of said Northwest Quarter; thence North 89 degrees 42'25" East, parallel with the North line of said Northwest Quarter, a distance of 250.00 feet; thence North 0 degrees 17'50" West, parallel with said West line, a distance of 500.00 feet; thence North 89 degrees 42'25" East, parallel with said North line, a distance of 90.00 feet; thence North 0 degrees 17'50" West, parallel with said West line a distance of 295.00 feet to a point on the North line of said Northwest Quarter; thence North 89 degrees 42'25" East, on said North line a distance of 477.89 feet; thence South 0 degrees 17'50" East, parallel with said West line, a distance of 1,300 feet; thence North 89 degrees 42'25" East, parallel with said North line, a distance of 542.11 feet; thence South 0 degrees 17'50" East, parallel with said West line a distance of 665.00 feet; thence South 89 degrees 42'25" West, parallel with said North line, a distance of 1,360.00 feet to a point on the West line of said Northwest Quarter; thence North 0 degrees 17'50" West, on said West line, a distance of 1,170.00 feet to the point of beginning. Generally located southeast of the 143rd Street East – 31st Street South.

BACKGROUND: The applicant is requesting consideration for a Conditional Use to allow "animal care, general", for a veterinary hospital on property zoned "RR" Rural Residential. The site (approximately 10 acres) is not platted and is located Southeast of the 143rd Street East – 31st Street S, in the northwest quarter of Section 12, Township 28 south, Range 2 east, Sedgwick County, Kansas. The applicant proposes to add veterinary services to the existing horse breeding services. The applicant owns approximately 40 acres, which abut the site on the west, east and the northwest, thus providing some buffering on those sides with that acreage. The applicant, Dr. Brooks, is a veterinarian who currently operates a clinic in Butler County, but is proposing to move his clinic from Butler County to this proposed site in Sedgwick County. The clinic is to be 2,000 sq-ft of the existing 16,800 sqft and the eventual proposed 20,600 sq-ft. Because there are no retail or wholesale sales involved in the existing horse breeding services, the current use is permitted by right as an agricultural use, per the UZC. The applicant has submitted a site plan showing the existing facility and proposed expansion to accommodate the veterinary services. The site plan also shows existing trees, an existing gravel drive, a trash container, an existing lagoon with a sewer line connecting it to the lagoon, the location of underground electrical service and transformer, exterior lighting (all located adjacent to the existing facility, 12-ft high and 250 watts), parking for 8 cars, a 100-ft setback and a well. Besides the proposed additions (two each at 1920 sq-ft) there is also shown future paddock fencing.

Currently this site is developed for its current use for horse breeding. The property to the west is owned by the applicant and provides access to the 10 acres where the facility is located, from 143rd Street East. This acreage is undeveloped. The property to the north is being used for agriculture. The property to south is being used for agriculture and a farm house can be seen from the facility. The property to the east is being used for agriculture. There are scattered residences throughout this area, some appear to be working farms and others appear to be residences on large acreage. The Unified Zoning Code's (UZC) definition of "animal care, general" is (page 10 UZC) "...means a use providing veterinary services for large animals, and that may include small animals (household pets), and for which boarding facilities may be provided" An animal care general use for veterinary hospital on property zoned "RR" Rural Residential requires a Conditional Use.

CASE HISTORY: The property is being used for agriculture; breeding of horses.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-20" Single Family Residential	Agriculture & Residence
EAST:	"RR" Rural Residential	Agriculture & Residence
SOUTH:	"RR" Rural Residential	Agriculture & Residence
WEST:	"RR" Rural Residential	Agriculture & Residence
	"SF-20" Single Family Residential	

PUBLIC SERVICES: 31st Street South is a two lane arterial, paved and maintained by the County. 143rd Street is an unpaved County road. There is electricity for the site. There is no public water or sewer for the site.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan identifies this property as Rural. Rural is intended for application in unincorporated Sedgwick County and accommodates very large, single-family residential development and agricultural uses in areas where a full range of municipal facilities and services are not available and not likely to be available in the near future. The Unified Zoning Code requires a Conditional Use for animal care, general

RECOMMENDATION: Based on the information available prior to the public hearing, staff recommends the application be APPROVED, subject platting within one year, providing a dedication of access easement to 143rd Street East and to the following conditions.

- (1) The site shall comply with the requirements and regulations of the Sedgwick County Department of Community Health and the Kansas Department of Health and Environment in regards to on-site sewage, animal waste and water wells for a Veterinary Hospitable, animal boarding facility and human use.
- (2) The current facility and proposed expansion shall comply with the requirements and regulations of the Building Code for a Veterinary Hospital and boarding facility.
- (3) Parking requirements for the proposed use with the current facility and the proposed expansion are 4 spaces per 1000 sq-ft., for a total of 19 spaces.
- (4) The facility shall be maintained free of rodent harborage, including but not limited to improperly stored materials, enclosed partition walls, and wooden floors closer than 12 inches above ground. Grain or other feed, other than hay, shall be contained in rodent proof bins or rodent proof metal containers. Rodenticides and insecticides shall be used to control rodents and flies. The facility shall be cleaned at least once a week or when necessary to control odors, flies and rodent breeding.
- (5) The use of Health Department approved soil sterilants and herbicides or other effective means of control for weeds and grass around the facility and corral areas.
- (6) The maximum number of horses boarded at any one time shall be 50 horses including those owned by the applicant.
- (7) The current facility and the proposed expansion to it shall be open to unannounced inspection by the Sedgwick County Department of Community Health and the Kansas Department of Health and Environment personnel during reasonable daylight hours to insure continued compliance with the above requirements.
- (8) One double-faced, non-lighted monument sign up to 12 sq-ft in surface area shall be permitted at the entrance to the facility. A sign permit shall be obtained from the Sedgwick County's Department of Code Enforce prior to the installation of the sign.
- (9) Any violations of the conditions of approval shall declare the Conditional use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The applicant's site is zoned "RR" Rural Residential and the surrounding area are zoned "RR" Rural Residential and "SF-20" Single Family Residential. The use is prominently agricultural with scattered residences. There is another veterinary hospital located approximately 1 mile to the northwest of the site on 31st Street South.
2. The suitability of the subject property for the uses to which it has been restricted: The current facility is permitted by right as agricultural. The current lack of utilities and the prospect of not having any in the foreseeable future makes in unlikely that this property will be developed for anything but agricultural type of uses or large acreage type of residences.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. Any detrimental affects would be mitigated by the recommended condition of approval and code required development standards and by the acreage owned by the applicant that abuts on the west, east and northwest sides of the site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request for Animal Care, General in "RR" Rural Residential is a Conditional Use per the WSC Unified Zoning Code. The current zoning of "RR" Rural Residential is not slated for change. The Conditional Use request for Animal Care, General provides an opportunity for the development of the Site according to the Wichita-Sedgwick County development standards.
5. Impact of the proposed development on community facilities: The impact of this development on the community facilities will be minimal, with the exception of generation of animal waste from both healthy and sick animals.

BILL LONGNECKER introduced the item and showed slides.

MCKAY asked why the applicant needed to plat.

KROUT stated they could remove the requirement.

MARK NICHOL, applicant, stated they would comply with requirements.

Motion: Approve subject to staff comments, deleting the requirements to plat.

MCKAY moved, **BLAKE** seconded the motion, to approve without platting and it carried unanimously (14-0).

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13. **ZON2001-00059** – Tom St. Peter (owner) request zone change from "SF-5" Single-Family to "TF-3" Two-Family on property described as:

Lots 6 and 8, on Chase, Stewarts Subdivision of Reserve A in NE 1/4 Sec. 25, T27S, R1W of 6th P.M. in Wichita, Kansas, Sedgwick County, Kansas. Generally located east side of Chase Street, south of Maple (322 Chase).

BACKGROUND: The applicant requests "TF-3" Two-Family zoning on a platted, infill lot located on the east side of Chase, south of Maple, at 322 Chase. The vacant property is currently zoned "SF-5" Single-Family.

"TF-3" zoned properties exist along both sides of this section of Chase Street, including a property two lots south of the application area. This section of Chase is a mixture of "SF-5" and "TF-3" zoning. To the north of the application area, all properties facing Maple Street are zoned "TF-3."

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5," "TF-3" single and two-family residences
SOUTH: "SF-5," "TF-3" single and two-family residences
EAST: "SF-5" single-family residences
WEST: "SF-5," "TF-3" single and two-family residences

PUBLIC SERVICES: The property is located along Chase Street, a two-lane residential street. As this is a residential street, no traffic counts or projections exist, likewise no street projects exist in the C.I.P. The existing half-width right-of-way for Chase Street is 25 feet.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as "medium density residential." The *Unified Zoning Code* states that the "TF-3" zone is generally compatible with the "medium density residential" designation in the *Comprehensive Plan*. The Planning Staff has suggested that the designation be changed to "low density residential" in the proposed land use guide that is currently under consideration.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area's immediate neighborhood is a mixture of "TF-3" and "SF-5" zoning, and is characterized by a mix of single-family and two-family land uses.
2. The suitability of the subject property for the uses to which it has been restricted: The property possibly could be developed with a single-family residence; however, the substantial number of duplexes in the immediate area and the neglected maintenance of some nearby properties limits this potential.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Development of a two-family, as opposed to single-family, dwelling unit should not detrimentally affect nearby property, due to the presence of other two family dwellings in the immediate area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested change in zoning classification is in conformance with the *Comprehensive Plan* "Wichita Land Use Guide," and in conformance with the *Unified Zoning Code* designation of "TF-3" zoning as "medium density residential." Even if the designation of the general area is changed to "low density residential," that should not rule out the possibility of some infill or redevelopment being permitted at a higher density.
5. Impact of the proposed development on community facilities: The only impact on community facilities would be the slight increase in vehicular traffic on Chase Street, as a result of a two-family dwelling at this location as opposed to a single-family dwelling. This impact on community facilities was considered when the area was designated "medium density residential" in the "Wichita Land Use Guide" of the *Comprehensive Plan*.

In some previous applications to do infill at a higher density, staff has proposed special conditions by Protective Overlay to ensure that the new development is compatible with the surrounding residences. Initially, staff had some concern about how this very small, narrow lot could be developed properly for two dwelling units. Maintaining a consistent setback, using the same materials and forms of existing homes, minimizing the visual impact of parking, and creating an entrance feature facing the street are the kinds of issues that may need to be addressed in certain areas. However, in this case, the variety of housing types and styles in the surrounding area does not seem to warrant special regulations.

JESS MCNEELY reviewed the staff report and presented slides.

RANDY JOHNSON, agent, indicated they agreed with staff comments.

Motion: To approve.

BARFIELD moved, **HENTZEN** seconded the motion (13-0-1). **WELLS** was not in room.

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14. **CON2001-00052** – Wilbur Ferdinand Kruse and Mary Teresa Kruse, Trustees, Wilbur Ferdinand Kruse Revocable Trust (owner) request a Conditional Use to allow parking, ancillary on property described as:

Lot 3, on 29th street, Gilders Court, Sedgwick County, Kansas. Generally located 200 feet south of 29th Street North approximately 850 feet east of Amidon (1511 West 29th Street North)

BACKGROUND: The applicants are requesting a "Conditional Use" to allow additional off-street parking on property zoned "SF-5" Single-family located on the southern 100 feet of Lot 3, Gilder's Court. The lot is located on the south side of 29th Street North between Coolidge and Porter, approximately 850 feet east of Amidon. The northern 200 feet of Lot 3 is zoned "LC" Limited Commercial and is the proposed site for a new commercial building for a window and door showroom and office facility.

The site plan shows Lot 3 being developed as a single lot. Parking for customers would be located on the "LC" portion of the lot near 29th Street North and parking for employees would be located on rear of the lot zoned "SF-5". The site plan includes sufficient parking to meet the Unified Zoning Code parking requirements. The loading dock is on the east side of the building, within the "LC" portion of the lot. An ample setback of 25 feet is shown around the southern portion of the lot where the property adjoins the "SF-5" property. The screening fence and landscape buffer can be located in this setback.

The surrounding land along 29th Street North is primarily developed with commercial uses between Coolidge and Porter. These include the Rental Ranch, an old Farha grocery store currently occupied by Lowry Electric and Thermal Gard, and a small strip center with a laundromat on the north side of 29th. On the south side, Security Self-Storage (self-service warehouse) occupies most of the block between Amidon and Coolidge. There are still two houses located on the south side of 29th. The Maids uses a converted house on the southeast corner of Coolidge and 29th. An old commercial building is located on the southwest corner of Porter and 29th. It has been vacant until recently but appears to be occupied by an upholstery shop. Servicemaster, a business service type of use, is located on the southeast corner of Porter and 29th.

CASE HISTORY: The property was platted as Lot 3, Gilder's Court on February 5, 1927.

By 1938 the aerial photograph documents that most of the lots were developed with houses on one-half acre to one-acre lots, including the subject tract. In 1976, the subject tract was lot split (L/S-0259) to make a second lot fronting onto 29th Street North. The eastern half of Lot 3 was occupied with a residence from the 1930s until sometime in the 1980s. The western half created by L/S-0259 has remained vacant until the present.

Commercial uses were developed along 29th Street North sometime during the 1950s, but the property was not annexed until the 1960s. The subject tract was zoned "LC" Light Commercial, along with the rest of the south side of 29th Street North and the western half of the north side of the block. The eastern half on the north side was zoned "SF-5" but was developed commercial uses, and would be non-conforming. Also, the Rental Ranch and perhaps other uses along 29th would require "GC" zoning rather than "LC", and may be non-conforming, depending on when the uses were established.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"; "SF-5"	Contractor's offices, business services, equipment rental, laundromat, upholstery shop, residences and vacant space
SOUTH:	"SF-5"; "TF-3"	Residences
EAST:	"SF-5"	Residences
WEST:	"SF-5"	Residences

PUBLIC SERVICES: Normal municipal water and sewer services are available. 29th Street North is a three-lane arterial street. Traffic volumes for 2001 at 29th and Amidon were 7,077 ADTs (average daily traffic). This is projected to increase modestly to 7,645 by 2030. The site plan shows one entrance onto 29th. The drive entrance is already installed.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the subject tract (the southern 100 feet of Lot 3 for "low-density residential", but shows the northern 200 feet for "commercial".

RECOMMENDATION: Based on the information available prior to the public hearing, Staff recommends that the request be APPROVED subject to the following conditions:

1. The Conditional Use shall be developed in general conformance with the site plan attached hereto. Any substantial change in the site plan shall require an amendment to this Conditional Use.
2. The ancillary parking area shall be developed in conformance with the requirements of Sec. III-D.6.p of the Unified Zoning Code ("UZC"), all applicable screening, lighting and compatibility requirements of Sec. IV-B of the UZC, and all buffering requirements of the Landscape Ordinance of the City of Wichita. As stipulated in Sec. III-D.6.p of the UZC, the parking lot shall be used for passenger vehicles only and in no case shall it be used for sales, repair work, or the storage, dismantling or servicing of any vehicles, equipment, materials or supplies.
3. A landscape plan shall be submitted for review and approval by the Planning Director prior to issuance of a building permit.
4. Development of the Conditional Use shall be commenced within one year from approval or the Conditional Use shall be null and void.
5. Any violation of these conditions shall render this Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The land along 29th Street North is occupied by commercial uses of similar intensity to that proposed for the subject tract (window and door showroom and office facility). Other uses along 29th include equipment rental, self-service warehouse (zoned "B" Multi-family), business services, the existing business facility for the proposed user, contractor's business, laundromat, upholstery shop, and vacant retail space, as well as several residences. Most of this property is zoned "LC" Limited Commercial, although some of the commercial uses in the area are located on property zoned "SF-5" and are non-conforming uses. The areas farther to the north, east, south, and west of the requested Conditional Use are zoned "SF-5" (with a scattered "TF-3" lots) and are developed with residential uses. The character of the residential neighborhoods is of long, deep lots with large yards to the rear of the houses. The ancillary parking lot would abut two of these rear yards.
2. The suitability of the subject property for the uses to which it has been restricted: It is unlikely that the subject property (southern 100 feet of Lot 3, Gilder's Court Addition) would be used for single-family use because its only access is to 29th Street North across the northern 200 feet of Lot 3 zoned for commercial use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the "Conditional Use" would allow commercial parking within 25 feet of the adjoining residential lots to the east, west and south.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification supports investment in the northern portion of Lot 3, which is in conformance with the *Comprehensive Plan's* "commercial" designation for future land use on the Wichita Land Use Guide. The conditions of the Conditional Use mandate that the ancillary parking lot adhere to the site development and supplementary use requirements of the UZC and the landscaping requirements of the Landscape Ordinance.
5. Length of the time property has remained vacant as zoned: Lot 3 has been vacant since the residence was removed in the 1980s. Although the lot was split in 1976 with the intention to develop the western half with commercial use, it has remained vacant also.
6. Impact of the proposed development on community facilities: The proposed development would generate a small amount of traffic. Access is limited to one point of access on an existing drive entrance. Other normal utility services are available and the proposed use should not exert any significant increase on these facilities.

DONNA GOLTRY, Planning staff, reviewed the staff report and presented the slides. DAB recommended approval. She noted that one property owner had expressed opposition.

BRUCE VIRGIL, agent, was present.

JIM ARMOUR, representing his son who owns property next to the application area, stated he did not want the use to change.

HENTZEN told Mr. Armour that the only thing being added was parking.

KROUT noted that the parking would support whatever use owned the property. A bar or tavern would require additional hearings.

GAROFALO asked for a clarification regarding who could use the parking.

MCKAY wanted to know if the site could be restricted to the existing use?

KROUT indicated that would be too restrictive. But one could restrict it by time.

MCKAY wanted to know about lighting restrictions.

WARREN asked about appearance requirements.

Motion: Approve subject to staff comments, light standards be restricted to a maximum of 14 feet in height and a 10:00 p.m. time limit for parking lot lights to be on.

MCKAY moved, **JOHNSON** seconded the motion, and it carried unanimously (14-0).

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15. **PUD2001-00002** – Starr Holdings, LLC c/o Steven R. Barrett (Owner/Applicant); Baughman Company, PA c/o Russ Ewy (Agent) request Planned Unit Development on property described as:

Tracts of land lying in the Northwest Quarter of Section 23, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas described as follows: Lots 5-10, 12, 20 and 27, Howard's Addition to College Hill Addition in Sedgwick County, Kansas, except that part platted as First General Addition, Wichita, Sedgwick County, Kansas; together with Lot 1, First General Addition, Wichita, Sedgwick County, Kansas; together with Lots 1, 3, 5 and 7 on Hillside Avenue, Lots 2, 4, 6 and 8 on Holyoke Avenue (now vacated), and Lots 1, 3, 5, 7, 9 & 11 on Holyoke (now vacated) all in Floral Second Addition to Wichita, Kansas, Sedgwick County, Kansas; together with Lot 1 on Hillside Avenue, Lot 2, on Holyoke Avenue (formerly Floral Place), Lot 1 on Holyoke Avenue (formerly Floral Place), and Lot 2 on Rutan Avenue, all in Floral Addition to Wichita, Kansas, Sedgwick County, Kansas; together with that part of vacated Frances Avenue located between Hillside and Rutan (formerly Park Avenue); together with that part of vacated Holyoke Avenue located between vacated Frances Avenue and Third Street (formerly Howard Street); together with that part of Holyoke Avenue located between Third Street (formerly Howard Street) and a point 50 feet South of the South line of Third Street (formerly Howard Street);

together with that part of Third Street (formerly Howard Street) located between Hillside and Rutan (formerly Park Avenue). Generally located southeast corner of Central and Hillside.

APPLICANT/AGENT: Starr Holdings, LLC c/o Steven R. Barrett (Owner/Applicant); Baughman Company, PA c/o Russ Ewy (Agent)

REQUEST: Planned Unit Development District

CURRENT ZONING: "GC" General Commercial, "LC" Limited Commercial, "GO" General Office, "B" Multi-Family, "TF-3" Two-Family

SITE SIZE: 7.6 acres

LOCATION: Southeast corner of Central and Hillside

PROPOSED USE: Redevelopment for mixed office and commercial uses

BACKGROUND: The applicant requests a zone change from "GC" General Commercial, "LC" Limited Commercial, "GO" General Office, "B" Multi-Family, and "TF-3" Two-Family to the Planned Unit Development (PUD) District on a 7.6 acre tract located at the southeast corner of Central and Hillside. The PUD District is a special purpose zoning district that is intended to encourage innovative land planning and design by allowing development to take advantage of special mixtures of land uses and by allowing minor deviations from zoning standards if not contrary to the general spirit and intent of the zoning code.

The northern half of the subject property is currently developed with a multi-story office/retail complex. The southern half of the subject property is developed with a parking area for the office/retail complex. The southern half of the subject property contains an open drainage ditch, which the applicant proposes to enclose in an underground storm sewer, and the right-of-way for 3rd Street North, which the applicant proposes to vacate. The applicant proposes to redevelop the subject property with mixed office and commercial uses likely to include a Walgreen's drug store, a retail center, a day care center, and a hotel or restaurant.

The proposed PUD consists of four parcels. Parcel 1 (1.34 acres) is proposed for all uses permitted by right in the "LC" Limited Commercial district. Parcel 2 (1.82 acres) is proposed for office; retail; restaurants; hotel or motel; hospital; medical service; personal care and improvement service; bank or financial institution; ATM; and day care. Parcel 3 (2.12 acres) would allow the same uses as Parcel 2 except day care. Parcel 4 (2.32 acres) would allow office, accessory parking, medical service and day care.

The PUD proposes two points of access on Central, two points of access on Hillside, and one point of access on Rutan. One point of access along Hillside is shown as right-in/right-out only. The access points along Central will be limited to right-in/right-out by an existing median.

Signage for Parcels 1-3 is proposed as 20-foot high monument signs totaling 200 square feet of signage per street frontage per parcel with signs spaced at least 150 feet apart, except for Parcel 3 where signs are proposed to be spaced 100 feet apart if sign height is reduced to 12 feet. Signage for Parcel 4 is proposed to be limited to monument style, 120 square feet in area and 12 feet in height.

According to the General Provisions, landscaping is proposed to be per the Landscape Code; however, trees in excess of Landscape Code requirements are shown on the development plan. A six-foot high masonry screening wall is proposed 15 feet north of the south property line. Uniform architecture and lighting elements are proposed for all parcels. Cross-lot vehicular circulation and a pedestrian walk system are proposed.

The surrounding area is characterized by a mixture of uses with the Wesley Medical Center being the predominate feature in the area. The properties north of the site are zoned "GO" General Office, "B" Multi-Family, and "LC" Limited Commercial and are developed with the Wesley Medical Center and the Wesley Motor Hotel. The properties east of the site are zoned "LC" Limited Commercial, "GO" General Office, and "TF-3" Two-Family and are developed with an Intrust Bank and single-family residences. The properties south of the site are zoned "GO" General Office and "TF-3" Two-Family and are developed with offices along Hillside and single-family residences along Rutan and Holyoke. The properties west of the site are zoned "GC" General Commercial and "B" Multi-Family and are developed with drive-thru restaurants and apartments.

CASE HISTORY: The subject property has a lengthy case history involving cases too numerous to list in detail in this report. The property is comprised of portions of several plats, with several of the platted lots subsequently being split. Much of the right-of-way within the site has been vacated. Several zone changes have been approved for the subject property, as have variances pertaining to signage, setbacks, and parking.

ADJACENT ZONING AND LAND USE:

NORTH: "GO", "B", & "LC" Wesley Medical Center, Wesley Motor Hotel
SOUTH: "GO" & "TF-3" Offices, single-family residences
EAST: "LC", "GO", & "TF-3" Intrust Bank, single-family residences
WEST: "GC" & "B" Drive-thru restaurants, apartments

PUBLIC SERVICES: The site has access to Central, Hillside, Rutan, 3rd Street North, and Holyoke. Central and Hillside are five-lane arterials with current traffic volumes of approximately 22,000 and 20,000 vehicles per day, respectively. The 2030 Transportation Plan estimates that traffic volumes on Central and Hillside will increase to approximately 24,000 and 26,000 vehicles per day, respectively. Rutan, 3rd Street North, and Holyoke are local streets. A one-day traffic count on Rutan taken on September 18, 2001 indicates that the traffic volumes on Rutan are approximately 1,200 vehicles per day at Central and 1,900 vehicles per day at 3rd Street North. The applicant proposes one access point along Rutan. The applicant also proposes to vacate the 3rd Street

North right-of-way and to provide a "hammerhead" for Holyoke where it currently intersects with 3rd Street North. The 2001-2010 Capital Improvement Program for the City of Wichita has a project to reconstruct the Central and Hillside intersection in 2002 to include both a left-turn and a right-turn lane along the subject property's Central and Hillside frontages. The applicant proposes to determine guarantees for other street improvements at the time of platting. Planning staff agrees with this approach and will be seeking, at a minimum, widening of Rutan at Central to allow for a left turn lane, plus the termination of Holyoke.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide indicates that the subject property is appropriate for "Commercial" development. The Commercial Locational Guidelines indicate that commercial sites should be located adjacent to arterial streets and should have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential land uses. The Commercial Locational Guidelines also indicate that commercially-generated traffic should not feed directly onto local residential streets.

RECOMMENDATION: Because of its location across from a major employer, at a high volume intersection, and near stable neighborhoods, planning staff believes that an "urban village" design concept (see attached) in which the uses are truly planned as a whole, rather than treated as four independent parcels, as a high-density, mixed-use development would more appropriate than the suburban-style development proposed by the applicant. However, the applicant is not willing to explore this concept; therefore, planning staff finds that redevelopment of the site for office and commercial uses is appropriate. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year and subject to the following modifications to the proposed PUD, most of which are intended to "memorialize" verbal assurances about the quality of development that have been made by the applicant at meetings with the neighborhood:

1. The eastwest drive along the south edge of Parcel 2 and the north edge of Parcel 3, the eastwest drive along the south edge of Parcel 3, and the north-south drive along the east edge of Parcel 3 shall be designed with no direct access to parking spaces. The eastwest drive along the south edge of Parcel 2 and the north edge of Parcel 3 shall exit onto Rutan directly across from the southern entrance to Intrust Bank and shall be designed as right-in/right-out only where it intersects with Hillside.
2. Site plans for all parcels shall be submitted and approved by the Planning Director prior to the issuance of building permits.
3. General Provision #24 shall be modified to require that the pedestrian walk system shall be reinforced by landscaping, pedestrian lighting, seating areas, and uniform paving materials that extend across vehicular drives as well as along building edges.
4. General Provision #13 shall be modified to require that the screening wall along the south edge of the property shall be installed at the south property line of Parcel 3 and 4. The sidewalk along the south edge of Parcel 4 shall be removed, and the screening wall at Holyoke shall be designed with an opening to allow pedestrian access.
5. The floor area ratio on Parcel 2 shall be limited to 0.75 (or approximately 60,000 square feet of gross floor area). The existing building on this parcel shall be demolished by April, 2002.
6. General Provision #18 shall be modified to permit no more than one freestanding restaurant with drive-in or drive-through facilities on the property, which shall be limited to either Parcel 1 or 2. No vehicle service, tire/battery stores, vehicle parts stores, or gasoline dispensing uses are permitted.
7. General Provision #7 shall be modified to limit signage as follows: Parcel 1, one sign per street frontage, maximum 64 square feet per sign, or 1 sign at the corner maximum 96 square feet; Parcel 2, maximum 2 signs, with one sign per use, and maximum 48 square feet per sign; Parcel 3, maximum 3 signs with maximum 48 square feet per sign; Parcel 4, 1 sign on Rutan, maximum 48 square feet. All signs shall be monument type, with the same architectural base and frame. Item G shall be revised to 10 feet maximum height for all signs, except for a "project identification sign" (e.g. "College Hill Square") at the corner, which shall be 20 feet maximum height. All building signs shall be designed with individual letters averaging no more than 24 inches in height and mounted directly on the building face.
8. General Provision #12 shall be modified to provide that a minimum of 100 trees shall be planted as part of the approved landscape plan, in general conformance with the development plan. Also, landscaping on each parcel shall utilize a similar palette of plant materials.
9. General Provision #15 shall be modified to require that trash receptacles shall be screened with walls that are of a pattern and color consistent with the building walls.
10. General Provision #16 shall be modified to require that all buildings in the PUD shall use the same palette of materials, textures, colors, and forms. The palette shall consist of red brick, earth-tone drivet, white stone trim, and red tile roofs or roof accents. The provision shall be modified to keep the wording on "vivid colors", and remove the wording on "similar to surrounding developments. All drives and parking areas shall be of uniform color and texture.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of uses with the Wesley Medical Center being the predominate feature in the area. The surrounding area contains commercial and office zoning and uses. The proposed development is consistent with the mixture of zoning and uses in the area as well as the character of development at the corner of Central and Hillside.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is currently developed with office and retail uses. The proposed redevelopment of the site could not be accomplished in the logical pattern proposed without rezoning. Were the site to be developed in conformance with the site's existing zoning, an unsightly, cluttered development would result.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval regarding signage, landscaping, screening, architectural character, access, site circulation, and limited uses should limit most detrimental effects on nearby properties. Traffic on Rutan, which has homes across the street facing the site and to the south, will increase moderately, but traffic volumes are already well above the level of most residential

streets today, and Rutan has functioned as a neighborhood "collector" street for many years, due to many factors, including neighborhood services and institutional uses that are conveniently served by this street.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita Land Use Guide indicates that the subject property is appropriate for "Commercial" development. The Commercial Locational Guidelines indicate that commercial sites should be located adjacent to arterial streets and should have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential land uses. The proposed development is located along two arterial streets and has site design features to limit adverse impacts on surrounding residential land uses. The Commercial Locational Guidelines also indicate that commercially-generated traffic should not feed directly onto local residential streets. While the proposed development contains an access drive along a local residential street, this access drive is existing and was installed at a time when development was based on a grid pattern and commercial access to side streets was common. Changing the development pattern in this area to prohibit access to Rutan would lead to serious congestion at the Central and Hillside intersection. Even more serious congestion would result if Rutan was closed to all through traffic.
5. Impact of the proposed development on community facilities: Impacts on community facilities shall be addressed through guarantees for street and drainage improvements at the time of platting. The proposed development will add somewhat to the traffic on Central and Hillside, but all intersections should function adequately after the planned street improvements are in place. A pedestrian-activated signal on Central west of Rutan for hotel guests to walk to and from Wesley will interfere somewhat with traffic during the peak hour, but should not be a significant problem if deemed necessary.

SCOTT KNEBEL stated the applicant asked for the case to be deferred.

Motion: To postpone the case to December 6.

MCKAY moved, **WARNER** seconded the motion, and it carried unanimously (14-0).

16. DR2001-00011 – Unilateral Annexation by Park City of properties generally located north of 45th Street North and west of Hydraulic.

Motion: The annexations are consistent with the Comprehensive Plan.

BISHOP moved, **COULTER** seconded the motion, and it carried unanimously (14-0).

17. Advance Plans report on Wireless Communication Master Plan requesting public hearing November 8, 2001, presented by Scott Knebel.

SCOTT KNEBEL reviewed the results of the subcommittees meeting, noting that the committee felt there was not a need to make any changes requiring an amendment to the Wireless Plan. The committee did recommend some revisions to the "environmentally sensitive map." A public hearing is required to adopt the map and if the full commission feels the plan needs to be amended, than a public hearing will be needed for that as well. The commission needs to set a date for the public hearings.

MICHAELIS asked if anyone present felt the plan needed additional review. No one present felt the plan needed review.

KROUT recommended that the Commission set a date to receive any public comment regarding the plan. November 15, 2001 at 6:30 would be an appropriate date.

18. Other Matters

KROUT indicated that there would be a discussion regarding Subdivision Amendments following next weeks Subdivision meeting.

The Metropolitan Area Planning Department informally adjourned at 3:47 p.m.

State of Kansas)
Sedgwick County) ss

I, Marvin S. KROUT, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2001.

Marvin S. KROUT, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)